BOARD MEETING DATE: May 3, 2013 AGENDA NO. 21

REPORT: Legislative Committee

SYNOPSIS: The Legislative Committee held a meeting on Friday, April 12, 2013. The next Legislative Committee is scheduled for Friday, May 10, 2013, at 9 a.m. in Conference Room CC8.

The Committee deliberated on agenda items for Board consideration and recommended the following actions:

| Agenda Item | Recommendation Action |
|---|---|
| AB 953 (Ammiano) California Environmental Quality Act | Support |
| SB 617 (Evans) California Environmental Quality Act | Oppose, Unless Amended |
| SB 731 (Steinberg) Environment: California Environmental Quality | Work with Author |
| SB 787 (Berryhill) Environmental Quality: The Sustainable Environmental Protection Act | Oppose |
| AB 466 (Quirk-Silva) Federal Transportation Funds | Work with Author |
| AB 1077 (Muratsuchi) Sales and Use Taxes: Vehicle License Fee: Exclusion: Alternative Fuel Motor Vehicles | Support |
| SB 454 (Corbett) Air Resources: Electric Vehicle Charging Station | Watch |
| SB 621 (Gaines) Vehicular Air Pollution: Exemption: Low-Use Vehicles: Non-Profit Organizations | Oppose |

RECOMMENDED ACTION:

Receive, file this report, and approve agenda items as specified in this letter.

Josie Gonzales
Chair
Legislative Committee

LBS:DJA:GS:jf

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**Attendance** ***[Attachment 1]***
The Legislative Committee met on April 12, 2013. Committee Chair Supervisor Josie Gonzales was present at SCAQMD's Diamond Bar headquarters. Committee Members Supervisor Michael Antonovich, Mayor Pro Tem Judy Mitchell, Councilmember Jan Perry, and Dr. Clark Parker, Sr. also attended via teleconference.

**Update on Federal Legislative Issues**
Mia O'Connell of the Carmen Group, SCAQMD federal legislative consultant, provided updates on key Washington D.C. issues.

Ms. O'Connell reported on President Obama's FY 2014 Budget and its impact on key agencies. Ms. O'Connell reported that the President's budget is not expected to pass into law, but it sets the stage for future negotiations with Congress on the annual appropriations bills as well as on any agreement this summer connected to raising the national debt ceiling.

The Obama budget proposes to impact a few of the relevant agencies as follows:

- **U.S. EPA – 4% decrease from current leve**l (to $8.2 billion)
  - Federal support for Air Quality Management - $10 million increase (8%)
  - Federal Vehicle and Fuels Standards - $9 million increase (9%)
  - Diesel Emission Reduction Act (DERA) Grants - $24 million decrease (80%)

- **U.S. DOE – 7% increase from current level** (to $28 billion)
  - Energy Efficiency and Renewable Energy Program - $1 billion increase to $2.8 billion.
  - Vehicle Technologies Program - $250 million increase

- **U.S. DOT - $4 billion increase (6%) from current level** (to $77 billion)
  - Maintains minimum MAP-21 levels though 2014
  - Plans 25% increases from MAP-21 levels after 2014

- Plans new $40 billion one-year stimulus for roads, transit, rail, aviation
- Plans new $40 billion 5-year program for high-speed and freight rail

Ms. O'Connell also reported on the latest activities regarding confirmation hearings as follows:

**Department of the Interior** - The U.S. Senate confirmed Sally Jewell for Secretary of the Interior. Ms. Jewell was formerly CEO of Recreational Equipment Inc. (REI) and previously spent 20 years in the banking industry.

**U.S. EPA –** There was a hearing for **t**he President's nominee for Administrator, Gina McCarthy, who is currently the Assistant Administrator for Air & Radiation. During this hearing, she received unanimous support from Democrats. However, there was criticism from Republicans on EPA policies and transparency. Ultimately, her confirmation is expected.

**U.S. DOE –** There was a hearing for the President's nominee for Secretary, Ernest Moniz. At the hearing, there was no serious opposition. His confirmation is expected.

**U.S. DOL –** The President nominated Thomas Perez for Secretary. He is currently Assistant Attorney General for Civil Rights at the Department of Justice. The confirmation hearing is scheduled for the week of April 18th.

**U.S. DOT –** There is no word on when a nominee for Secretary will be named. Current top contenders appear to be National Transportation Safety Board Chair, Deborah Hersman and Charlotte, N.C. Mayor Anthony Foxx.

Committee Chair Supervisor Gonzales asked whether there was an update on the sequestration issue. Ms. O'Connell responded that sequestration is a 10-year program that has just taken effect with 5% - 7% reductions, beginning with FY 2013 programs. As times goes on, the cuts will have more impact. There have been furloughs at some of the federal agencies.

Committee Chair Supervisor Gonzales inquired as to whether there are those in D.C. looking into or taking action on the fracking issue. Ms. O'Connell responded that she would submit a response in writing at a later time.

Mark Kadesh of Kadesh & Associates, SCAQMD federal legislative consultant, updated the Committee on key Washington D.C. legislative issues.

Mr. Kadesh reported that the President's Budget was more of a priorities document with political purpose behind it. It is a reflection of what the President offered previously as part of his grand bargain. It should be noted that the budget resolutions in the House and the Senate have already gone forward and been passed by the respective chambers, although not reconciled. The President's Budget came out about two months later than it normally comes out.

Committee Chair Supervisor Gonzales reiterated the request regarding the fracking issue that she made to Ms. O'Connell to Mr. Kadesh.

**Update on Sacramento Legislative Issues**
In the interest of time, SCAQMD's state consultants gave abbreviated reports on key Sacramento issues.

Jason Gonsalves reported on the two state fracking bills SCAQMD is supporting: AB 7 (Wieckowski) passed out of Assembly Natural Resources Committee and SB 4 (Pavley) is scheduled to be heard in Senate Environmental Quality Committee on May 1st. In regards to the bills introduced by Senator Wright, Mr. Gonsalves reported that the author pulled SB 736 and that SB 389 and SB 736 would be heard in Senate Environmental Quality on April 17th. In preparation for the hearing, staff and consultants have met with the Committee members and the Committee consultants.

Will Gonzalez reported that the major impetus for California Environmental Quality Act (CEQA) reform has dissipated with Senator Rubio's departure from the Senate. Nevertheless, some reform is anticipated and it will probably be the Pro Tem's spot bill, SB 731 that will carry the eventual reform package. Leadership has made clear that overturning the Ballona decision is a priority. Also under serious consideration in Sacramento is the establishment of streamlined CEQA courts across the state.

**Adopt SCAQMD Proposals for CEQA Reform *[Attachment 2]***
Barbara Baird, Chief Deputy Counsel, presented a package of eight proposals for CEQA revisions and recommended they serve as SCAQMD's position on CEQA as the state legislature considers CEQA reform this year.

The Committee asked staff to include an additional proposal that would allow successful CEQA defendants to recover their attorney fees when a frivolous lawsuit is filed. Staff has prepared such an amendment which is now included in the attachment as Proposal 9. This item also appears as a separate agenda item, on this agenda, including Proposal 9 regarding recovering attorney fees.

***The Legislative Committee approved staff's recommendation on SCAQMD's CEQA reform principles.***

**Recommend Position of the following State Bills [Attachment 3]**
Guillermo Sánchez, Senior Manager for Legislative and Public Affairs (LPA) presented the following CEQA bills for the Committee's consideration.

**AB 953 (Ammiano) California Environmental Quality Act** overturns the recent Ballona decision that bars an Environmental Impact Report (EIR) from considering the effects of the environment on a project. If enacted AB 953 would allow an EIR to consider both the impact of a project on the environment and the impact of the environment on the project and people attracted to the project. Staff recommended a position of SUPPORT.

***The Legislative Committee approved staff's recommendation to SUPPORT SB 953.***

**SB 617 (Evans) CEQA** would also overturn the Ballona decision. However, this bill additionally provides for the concurrent certification of the record of proceeding with the administrative process and requires the posting of materials in an electronic format within five (5) days of receipt by the lead agency. If enacted as currently written, these latter requirements would impose a substantial administrative burden that may be impracticable to discharge. Consequently, staff recommended a position of OPPOSE, UNLESS AMENDED.

***The Legislative Committee approved staff's recommendation on SB 617 to OPPOSE, UNLESS AMENDED.***

**SB 731 (Steinberg) CEQA** is the Pro Tem's response to repeated calls for CEQA reform and the over 27 bills introduced this session alone on CEQA. The bill does not yet contain substantive language, but is intended to be a vehicle for CEQA reform this session. Staff believes the bill offers an opportunity to secure a seat at the table to help guide what is to be included in the final reform package. To that end, staff recommended a position of WORK WITH AUTHOR and sharing with him SCAQMD's principles for CEQA reform.

***The Legislative Committee approved staff's recommendation on SB 731 to WORK WITH AUTHOR.***

**SB 787 (Berryhill), Environmental Quality: the Sustainable Environmental Protection Act** is a repeat of the "standards based" approach introduced by Senator Rubio last year. Under this approach, a project cannot be challenged on CEQA grounds

if the project otherwise complies with state or local environmental requirements. However, this completely undoes existing environmental law which, under CEQA, provides decision makers with the tool of particularized findings of significant environmental impact and their mitigation. Consequently, staff recommended a position of OPPOSE.

***The Legislative Committee approved staff's recommendation to OPPOSE SB 787.***

**AB 466 (Quirk-Silva) Federal Transportation Funds**, presented by LPA Program Supervisor Marc Carrel, seeks to establish a formula based on population and ozone attainment for allocating federal Congestion Mitigation and Air Quality Improvement (CMAQ) Program funds to regional transportation agencies. However, the bill establishes a distribution formula based on out-of-date standards and no longer applicable federal law. It also fails to consider particulate matter as a factor. Consequently, staff recommended a position to WORK WITH THE AUTHOR and our regional transportation partners to seek a distribution formula that is fair and equitable for our region.

Committee Member Dr. Parker requested that when we work with the author we make it clear to her and her staff the relevant standards that guide our efforts. Mayor Pro Tem Judy Mitchell asked staff to consult with the Southern California Association of Governments as we work with the author on this bill.

***The Legislative Committee approved staff's recommendation on AB 466 to WORK WITH AUTHOR.***

**AB 1077 (Muratsuchi) Sales and use taxes: vehicle license fee: exclusions,** presented by LPA Community Relations Manager Philip Crabbe III, seeks to require that when a consumer purchases an alternative fuel vehicle, the vehicle license fee and state portion of the sales tax be calculated on the purchase price of the vehicle after the federal tax credit and state incentive funding for alternative fuel vehicles is deducted from the purchase price. Staff believes this would further encourage the early and more widespread adoption of zero and partial zero emission vehicles and recommended a position of SUPPORT.

***The Legislative Committee approved staff's recommendation to SUPPORT AB 1077.***

LPA Deputy Executive Officer Lisha Smith presented the following two bills for the Committee's consideration.

**SB 454 (Corbett) Air resources: vehicle charging stations** intends to ensure that commercially run electric vehicle charging stations are as publicly accessible as

possible. It prohibits the provider of an electric vehicle charging station from requiring a user to pay a subscription fee or obtain membership in order to use the station and requires the provider to accept payment via credit card or phone.

However, staff reported that ample testimony was provided in the Senate Transportation Committee that, as drafted, the bill may actually serve as a disincentive to further investment in electric vehicle charging stations. At this time staff recommended a position of WATCH.

***The Legislative Committee approved staff's recommendation to WATCH SB 454.***

**SB 621 (Gaines) Vehicular diesel emissions: compliance** would require the California Air Resources Board (CARB) to amend its In-Use, On-Road Heavy-Duty Diesel Vehicles regulation to extend compliance dates by five years. If enacted, the bill would undermine the centerpiece of California's efforts to reduce toxic diesel particulate, be unfair to fleets and vehicle owners that have invested in early compliance, and be unfair to manufacturers of clean technologies that have made business decisions based on the dates in the regulation. Staff recommended a position of OPPOSE.

***The Legislative Committee approved staff's recommendation to OPPOSE SB 621.***

**Report from SCAQMD Home Rule Advisory Group *[Attachment 4]***
Please refer to Attachment 4 for written report.

**Other Businesses:** None

**Public Comment Period:** None

**Attachments**
1. Attendance Record
2. Adopt SCAQMD Proposals for CEQA Reform
3. Recommended Position on States Bills
4. Home Rule Advisory Committee Report

# ATTACHMENT 1

## ATTENDANCE RECORD – April 12, 2013

**DISTRICT BOARD MEMBERS**:
Supervisor Josie Gonzales, Committee Chair
Councilmember Jan Perry, Committee Vice Chair (teleconference)
Supervisor Michael D. Antonovich (teleconference)
Mayor Pro Tem Judy Mitchell (teleconference)
Clark E. Parker, Ph.D. (teleconference)

**STAFF TO COMMITTEE**:
Lisha B. Smith, Deputy Executive Officer
Guillermo Sánchez, Senior Public Affairs Manager
Julie Franco, Senior Administrative Secretary

**DISTRICT STAFF:**
Barry Wallerstein, Executive Officer (teleconference)
Barbara Baird, District Counsel
Elaine Chang, Deputy Executive Officer
Peter Greenwald, Senior Policy Advisor
Matt Miyasato, Deputy Executive Officer
Mohsen Nazemi, Deputy Executive Officer
Michael O'Kelly, DEO/Chief Financial Officer
Naveen Berry, Planning & Rules Manager
Marc Carrel, Program Supervisor
Philip Crabbe, Community Manager
Stan Myles, Sr. Public Information Specialist (teleconference)
Ricardo Rivera, Sr. Staff Specialist
Veera Tyagi, General Counsel
Kim White, Public Information Specialist
Patti Whiting, Staff Specialist
Paul Wright, Audio Video Specialist
Rainbow Yeung, Sr. Public Information Specialist (teleconference)

**OTHERS PRESENT:**
Mark Abramowitz, Board Member Assistant (Lyou)
Greg Adams, L.A. County Sanitation Districts
Leila Barker, LADWP
Jeff Catalano, Board Member Assistant – Perry (teleconference)
Paul Gonsalves, Gonsalves & Son (teleconference)
Jason Gonsaves, Gonsalves & Son (teleconference)
Will Gonzalez, Gonzalez, Quintana & Hunter (teleconference)
Gary Hoitsma (teleconference)
Mark Kadesh, Kadesh & Associates (teleconference)
Chris Kierig, Kadesh & Associates (teleconfernce)
Vlad Kogan, Orange County Sanitation District
Bill LaMarr, California Small Business Alliance
Rita Loof, RadTech
Clayton Miller, CIAGC
Mia O'Connell, Carmen Group (teleconference)
Angela Ovalle, Los Angeles County CEO's Office
Max Pike, CEA
David Rothbart, LACSD
Steve Schuyler, BIASC
Andy Silva, Board Member Assistant (Gonzales)
Susan Stark, BP
Lee Wallace, SCG/SDG & E
Warren Weinstein, Kadesh & Associates (teleconference)

# ATTACHMENT 2

## SOUTH COAST AIR QUALITY MANAGEMENT DISTRICT

## PROPOSALS FOR CEQA REFORM 2013

*Proposal 1*

Public Resources Code Section 21177(a) is amended to read as follows:

An action or proceeding shall not be brought pursuant to Section 21167 unless the alleged grounds for noncompliance with this division were presented to the public agency orally or in writing during the public comment period provided by this division or prior to the close of the public hearing on the project before the issuance of the notice of determination. *An action or proceeding shall not be brought based on any written comments that were not filed by the close of the public comment period on a draft document prepared pursuant to this division, if such a comment period is provided, except that an action or proceeding may be brought based on written comments regarding the adequacy of the CEQA Findings, Statement of Overriding Considerations, or Mitigation Monitoring and Reporting Plan, provided that such comments are filed at least five days before the approval of the project, in any case where these documents were made available to the public at least 15 days before the approval of the project.*

*Proposal 2*

Public Resources Code Section 21168.9(f) is added to read as follows:

(f) *Upon request of any party to the proceeding, including a real party in interest, the court shall include in a Statement of Decision its reasons for determining whether all or any part of a project shall not be ordered to halt pending compliance with any deficiencies in compliance with this division identified by the court.*

*Proposal 3*

Public Resources Code Section 21081.6(d) is added to read as follows:

(d) *A public agency shall not assign responsibility for implementing a mitigation measure to another public agency without first obtaining that agency's written consent. Nothing in this subdivision shall preclude a public agency from making the finding specified in Section 21081(a)(2).*

*Proposal 4*

Public Resources Code Section 21080.36 is added to read as follows:

*This division shall not apply to any action by a public agency to develop or adopt guidelines or thresholds of significance for its use or use by others in implementing this division.*

*Proposal 5*

Public Resources Code Section 21168.8 is added to read as follows:

*In any action or proceeding under Sections 21168 or 21168.5, the determination of an environmental regulatory agency charged by law with the protection of a particular environmental or natural resource regarding the significance or non-significance of an impact on that resource shall be subject to the arbitrary and capricious standard of review whenever the project under review is the approval by the agency of a regulation intended for the protection or improvement of that resource. A city, county, or city and county shall not be considered an environmental regulatory agency within the meaning of this section.*

*Proposal 6*

Public Resources Code Section 21083(g) is added to read as follows:

*The Office of Planning and Research shall prepare a CEQA Style Guide for voluntary use that will promote concise and readable CEQA documents. This Style Guide will promote standardized formats for both written and online presentation with an emphasis on improving public disclosure of project impacts. The Style Guide will provide guidance on what type of information should be kept in the main text of the EIR, and what should be put into technical appendices.*

*Proposal 7*

Public Resources Code Section 21082.2(a) is amended to read as follows:

(a) The lead agency shall determine whether a project may have a significant effect on the environment based on substantial evidence in light of the whole record. *A public agency may use appropriate past conditions or projected future conditions, rather than conditions at the time the notice of preparation is published or environmental review is*

*commenced, as the baseline physical conditions by which the agency determines whether an impact is significant, where the reasonableness of using such baseline is supported by substantial evidence. A public agency need not use the same baseline for each environmental impact.*

*Proposal 8*

Public Resources Code Section 21002.1(a) is amended to read as follows:

(a) The purpose of an environmental impact report is to identify the significant effects on the environment of a project, *to identify the significant exiting or reasonably foreseeable effects of the environment on a project*, to identify alternatives to the project, and to indicate the manner in which those significant effects can be mitigated or avoided.

*Proposal 9*

Add Public Resources Code Section 21168.8 to read as follows:

*In any action or proceeding filed under Section 21168 or Section 21168.5 alleging noncompliance with the provisions of this division, the court shall award the prevailing defendant or defendants their reasonable costs and attorneys' fees incurred in defending the action, upon a finding made upon noticed motion that the action was not filed or maintained with reasonable cause and in the good faith belief that there was a justifiable controversy under the facts and the law which warranted filing or maintaining the action.*

# ATTACHMENT 3A

## AB 953 (Ammiano)
## California Environmental Quality Act.

**Summary:** This bill would require an Environmental Impact Report (EIR) to include a detailed statement on any significant effects that may result from locating a proposed project near, or attracting people to, existing or reasonably foreseeable natural hazards or adverse environmental conditions.

**Background:** The California Environmental Quality Act (CEQA) is the primary state law requiring public officials to understand and consider the environmental consequences of their decisions before they make them. CEQA requires a lead agency to complete an EIR on a project that might have a significant effect on the environment, and either approve that it may have a significant effect on the environment or adopt a negative declaration if it finds that the project will not have a negative effect. CEQA also requires a lead agency to prepare a mitigated negative declaration for a project that may have a significant effect on the environment if revisions in the project would avoid that effect.

Historically, courts have held that CEQA is for evaluating a project's impact on the environment. However, CEQA Guidelines specify that EIRs should contain analysis on what environmental impacts could occur by attracting or bringing people into the area of potential hazards (i.e. fault lines, flood plains, coastlines and wildfire areas). The 2011 Appeals Court decision in *Ballona Wetlands Land Trust v. City of Los Angeles* would mandate that even if a project is built on a natural hazard, the environmental review does not comment on the potential effects of this natural hazard on the project or the people who would be brought to the hazard by the project, thus rejecting consideration of the effects of the natural environment on a project.

The author claims that this bill would clarify legislative purpose with regards to "converse-CEQA" analysis. The author asserts that this bill would update CEQA to ensure that future environmental concerns and environmental effects on the project site are considered, thus protecting not only the project, but the people who live, work, or visit in the area of that project.

**Status**: Set for hearing, April 15 - Assembly Natural Resources Committee.

**Specific Provisions:** Specifically, this bill would require that:

1) An EIR include a detailed statement setting forth various items, including:
   (a) Any significant effects that may result from locating the proposed project near, or attracting people to, existing or reasonably foreseeable natural hazards or adverse environmental conditions.

**Impacts on SCAQMD's Mission, Operations or Initiatives**: This bill would overturn the *Ballona* decision, specifying that EIRs are to include the effects of locating a proposed project near, or attracting people to, existing or reasonably foreseeable natural hazards or adverse environmental conditions such as sea-level rise, wildfire areas, and earthquake faults. This approach would be in line with SCAQMD's mission, operation and initiatives by allowing the Agency to have the

authority and the clear guidance on how to prepare or comment on an EIR that includes all the necessary information that fully considers the full spectrum of environmental impacts relating to a proposed project. For example, absent this bill, a CEQA analysis would be barred from considering the impact an existing freeway might have on a school, hospital or other sensitive receptors that are being proposed. This bill would clarify that CEQA analyses can return to the approach taken prior to the 2011 court decision.

**Recommended Position:** SUPPORT

**Support:**
Planning and Conservation League (Sponsor)

**Opposition:**
Unknown

# ATTACHMENT 3B

CALIFORNIA LEGISLATURE—2013–14 REGULAR SESSION

## ASSEMBLY BILL No. 953

**Introduced by Assembly Member Ammiano**

February 22, 2013

An act to amend Sections 21060.5, 21068, and 21100 of the Public Resources Code, relating to the California Environmental Quality Act.

LEGISLATIVE COUNSEL'S DIGEST

AB 953, as introduced, Ammiano. California Environmental Quality Act.

The California Environmental Quality Act (CEQA) requires a lead agency, as defined, to prepare, or cause to be prepared, and certify the completion of, an environmental impact report (EIR) on a project that it proposes to carry out or approve that may have a significant effect on the environment or to adopt a negative declaration if it finds that the project will not have that effect. CEQA also requires a lead agency to prepare a mitigated negative declaration for a project that may have a significant effect on the environment if revisions in the project would avoid or mitigate that effect and there is no substantial evidence that the project, as revised, would have a significant effect on the environment. CEQA defines "environment" and "significant effect on the environment" for its purposes. CEQA requires the EIR to include a detailed statement setting forth specified facts.

This bill would revise those definitions, as specified. This bill would additionally require the lead agency to include in the EIR a detailed statement on any significant effects that may result from locating the proposed project near, or attracting people to, existing or reasonably foreseeable natural hazards or adverse environmental conditions.

Because the lead agency would be required to undertake this additional consideration, this bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: yes.

*The people of the State of California do enact as follows:*

SECTION 1. Section 21060.5 of the Public Resources Code is amended to read:

21060.5. "Environment" means the physical conditions ~~which~~ *that* exist within the area ~~which~~ *that* will be affected by a proposed project, including land, air, water, minerals, flora, fauna, noise, objects of historic or aesthetic significance, *as well as the health and safety of people affected by the physical conditions at the location of a project*.

SEC. 2. Section 21068 of the Public Resources Code is amended to read:

21068. "Significant effect on the environment" means a substantial, or potentially substantial, adverse change in the environment. *"Significant effect on the environment" includes exposure of people, either directly or indirectly, to a substantial existing or reasonably foreseeable natural hazard or adverse condition of the environment.*

SEC. 3. Section 21100 of the Public Resources Code is amended to read:

21100. (a) All lead agencies shall prepare, or cause to be prepared by contract, and certify the completion of, an environmental impact report on any project which they propose to carry out or approve that may have a significant effect on the environment. Whenever feasible, a standard format shall be used for environmental impact reports.

(b) The environmental impact report shall include a detailed statement setting forth all of the following:

(1) All significant effects on the environment of the proposed project.

(2) In a separate section:

(A) Any significant effect on the environment that cannot be avoided if the project is implemented.

(B) Any significant effect on the environment that would be irreversible if the project is implemented.

(3) Mitigation measures proposed to minimize significant effects on the environment, including, but not limited to, measures to reduce the wasteful, inefficient, and unnecessary consumption of energy.

(4) Alternatives to the proposed project.

(5) The growth-inducing impact of the proposed project.

*(6) Any significant effects that may result from locating the proposed project near, or attracting people to, existing or reasonably foreseeable natural hazards or adverse environmental conditions.*

(c) The report shall also contain a statement briefly indicating the reasons for determining that various effects on the environment of a project are not significant and consequently have not been discussed in detail in the environmental impact report.

(d) For purposes of this section, any significant effect on the environment shall be limited to substantial, or potentially substantial, adverse changes in physical conditions ~~which~~ *that* exist within the area as defined in Section 21060.5.

(e) Previously approved land use documents, including, but not limited to, general plans, specific plans, and local coastal plans, may be used in cumulative impact analysis.

SEC. 4. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because a local agency or school district has the authority to levy service charges, fees, or assessments sufficient to pay for the program or level of service mandated by this act, within the meaning of Section 17556 of the Government Code.

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# ATTACHMENT 3C

## SB 617 (Evans)
## California Environmental Quality Act.

**Summary:** This bill would legislatively overturn judicial decisions by expanding the scope of the California Environmental Quality Act (CEQA) analysis to include impacts of the existing environment on proposed projects and their users. It also provides for increased electronic access of CEQA documents and seeks to make CEQA litigation more efficient by allowing Lead Agencies to prepare the administrative record simultaneously with a project's CEQA compliance documents.

**Background:** CEQA is the primary state law requiring public officials to understand and consider the environmental consequences of their decisions before they make them. Historically, courts have held that CEQA is for evaluating a project's impact on the environment. However, CEQA Guidelines specify that Environmental Impact Reports (EIRs) should contain an analysis on what environmental impacts could occur by attracting or bringing people into the area of potential hazards (i.e. fault lines, flood plains, coastlines and wildfire areas). An Appeals Court in *Ballona Wetlands Land Trust v. City of Los Angeles* determined in 2011 that even if a project is built on a natural hazard, the environmental review cannot comment on the potential effects of this natural hazard on the project or the people who would be brought to the hazard by the project, thus rejecting consideration of the effects of the natural environment on a project.

This bill would amend CEQA to ensure that future environmental concerns and environmental effects on the project site are considered, thus protecting not only the project, but the people who live, work, or visit in the area of that project.

In addition, CEQA requires a lead agency to complete an EIR on a project that might have a significant effect on the environment, and either approve that it may have a significant effect on the environment or adopt a negative declaration if it finds that the project will not have a negative effect. CEQA requires a lead agency to prepare a mitigated negative declaration for a project that may have a significant effect on the environment if revisions in the project would avoid that effect. CEQA also authorizes the Secretary of the Natural Resources Agency to certify a regulatory program of a state agency. CEQA provides that written documentation required by those certified regulatory programs may be submitted in lieu of an EIR. CEQA requires an administering agency to file with the Secretary of the Natural Resources Agency a notice of decision made pursuant to the certified regulatory program, which is required to be available for public inspection. CEQA requires a lead agency to call a scoping meeting for projects, provide a notice of the meeting, and file a notice of approval or determination with the Governor's Office of Planning and Research (OPR) if the lead agency is a state agency or with the county clerk if the lead agency is a local agency. CEQA requires a public agency that has completed an EIR to file a notice of completion with OPR.

This bill would require those notices to be filed with both OPR and the county clerk and be posted by the county clerk for public review. The county clerk would be required to post the notices within one business day of receipt and keep them posted for at least 30 days. OPR would be required to post the notices on a publicly available online database for at least 30 days. The 30-day time period

would not commence until a notice was actually posted for public review by the county clerk or was available in the online database, whichever was later.

Currently, if a project is determined by a state agency to be exempt from CEQA, a state agency or a project proponent must file a notice of determination with OPR. And if a project is determined by a local agency to be exempt from CEQA, the local agency or project proponent must file a notice of determination with the county clerk of the county in which the project is located. This bill would require the notice of determination to be filed by the lead agency with both OPR and the county clerk. OPR and the county clerk, after posting the notices, must return each notice to the filing agency with a notation of the period the notice was posted.

Currently, CEQA establishes a procedure for the preparation and certification of the record of proceedings upon the filing of an action or proceeding challenging a lead agency's action on the grounds of noncompliance with CEQA. This would occur after the CEQA compliance document (e.g. EIR, negative declaration) is completed. Intending to make litigation more efficient, this bill would allow Lead Agencies to prepare the administrative record simultaneously with a project's CEQA compliance documents, but the applicant must agree to pay the Lead Agency's cost to prepare and certify the record of proceedings.

**Status**: In Committee, Senate Environmental Quality

**Specific Provisions:** Specifically, this bill would require that:

a) The definition for "Environment" in CEQA be modified to mean not just "the physical conditions that exist within the area that will be affected by a proposed project, including land, air, water, minerals, flora, fauna, noise, objects of historic or aesthetic significance" but also "the health and safety of people affected by the physical conditions at the location of a project."
b) The definition of "Significant effect on the environment" be modified to mean not just "a substantial, or potentially substantial, adverse change in the environment," but also to include "exposure of people, either directly or indirectly, to substantial existing or reasonably foreseeable natural hazard or adverse condition of the environment."
c) Each environmental impact report prepared by a lead agency would be required to include a detailed statement setting forth "any significant effects that may result from locating development near, or attracting people to, existing or reasonably foreseeable natural hazards or adverse environmental conditions."
d) This bill would require certain notices currently filed with either OPR or a county clerk to be filed with both OPR and the county clerk, and within one business day of receipt, to be posted by the county clerk for public review for 30 days. OPR would be required to post the notices on a publicly available online database for at least 30 days. The 30-day time period would not commence until a notice was actually posted

for public review by the county clerk or was available in the online database, whichever was later.

e) This bill would require the lead agency, at the request of a project applicant, to, among other things, prepare a record of proceedings concurrently with the administrative process and require electronic posting within five days business days after a document is released or received by the public agency. Because the bill would require a lead agency to prepare the record of proceedings as provided, this bill would impose a state-mandated local program. The bill would condition, upon the consent of a lead agency that is a state agency, the application to state agency of the concurrent preparation of the record of proceedings.
f) Upon the filing of an action or proceeding challenging a lead agency's action on the grounds of noncompliance with CEQA, the written request of the applicant must include an agreement to pay all of the lead agency's costs in preparing and certifying the record of proceedings and complying in a manner specified by the lead agency.
g) Repeals existing CEQA exemptions related to the California Men's Colony West Facility, the Corcoran prison facility, a prison in King County, and the Napa Valley Wine Train.

**Impacts on AQMD's Mission, Operations or Initiatives**: This bill would overturn the Ballona decision, specifying that EIRs are to include the effects of locating a proposed project near, or attracting people to, existing or reasonably foreseeable natural hazards or adverse environmental conditions such as sea-level rise, wildfire areas, and earthquake faults. This approach would be in line with SCAQMD's mission, operation and initiatives by allowing the Agency to have the authority and the clear guidance on how to prepare an EIR that includes all the necessary information that fully considers the full spectrum of environmental impacts relating to a proposed project. For example, absent this bill, a CEQA analysis would be barred from considering the impact an existing freeway might have on a school, hospital or other sensitive receptors that are being proposed. This bill would enable CEQA analyses to be prepared under the approach taken prior to the 2011 court decision.

This bill also provides greater access to notices, by requiring all notices to be filed by lead agencies with both OPR and the county clerk, and for notices to be posted for 30 days by both. OPR is to post notices online and a county clerk is to post notices for public review, not just for public inspection. By requiring public notices be posted locally and provided in a central database online where all other notices are being posted, it provides the public greater access to information and greater transparency of the CEQA process.

However, the provisions regarding certifying the record concurrently with the administrative process and posting in an electronic format within five business days may pose a substantial

administrative burden that may be impracticable to discharge. Consequently, staff recommends adopting a position of OPPOSE UNLESS AMENDED, to wit:

1. Some of the documents relied upon may be copyrighted or not convertible to downloadable form, or too voluminous and unable to be put into such form. Exemptions from the requirement to put on the web should be made for these. In the case of documents that are simply too voluminous, we may suggest that they be made available thru CD or other electronic means instead. In the case of copyrighted material, it should just be required to be made available for review upon request at the lead agency's offices.

2. Some public comments may be so voluminous and/or in awkward form that it is not reasonable to convert and post them within 5 business days. An agency should be allowed to take a reasonable time, as determined by the agency, if it makes a finding of good cause and justifies it in writing.

3. The requirements of this bill, especially the electronic posting requirements, present potential opportunities to challenge the agency's ultimate action for failure to strictly comply. The bill should be amended to provide that a "Failure to comply with any of the requirements of Sect. 21167.6.2 shall not constitute grounds for invalidating any document approved or action taken by the agency."

**Recommended Position:** OPPOSE, UNLESS AMENDED

**Support:**
Planning and Conservation League

**Opposition:**
Unknown

# ATTACHMENT 3D

AMENDED IN SENATE APRIL 1, 2013

**SENATE BILL** **No. 617**

**Introduced by Senator Evans**
**(Principal coauthor: Senator DeSaulnier)**

February 22, 2013

An act to amend Sections 21060.5, 21068, 21080.5, 21083.9, 21092, 21092.2, 21092.3, 21100, 21108, 21152, and 21161 of, to amend, repeal, and add Section 21167.6 of, to add and repeal Section 21167.6.2 of, and to repeal Sections 21080.01, 21080.02, 21080.03, and 21080.04 of, the Public Resources Code, relating to the California Environmental Quality Act.

LEGISLATIVE COUNSEL'S DIGEST

SB 617, as amended, Evans. California Environmental Quality Act.

(1) The California Environmental Quality Act ~~(CEQA)~~, *referred to as CEQA* requires a lead agency, as defined, to prepare, or cause to be prepared, and certify the completion of, an environmental impact report ~~(EIR)~~, *referred to as an EIR* on a project that it proposes to carry out or approve that may have a significant effect on the environment or to adopt a negative declaration if it finds that the project will not have that effect. CEQA also requires a lead agency to prepare a mitigated negative declaration for a project that may have a significant effect on the environment if revisions in the project would avoid or mitigate that effect and there is no substantial evidence that the project, as revised, would have a significant effect on the environment.

CEQA authorizes the Secretary of the Natural Resources Agency to certify a regulatory program that meets specified requirements. CEQA provides that written documentation required by those certified regulatory programs may be submitted in lieu of an EIR. CEQA requires

an administering agency to file with the secretary a notice of decision made pursuant to the certified regulatory program, which is required to be available for public inspection. CEQA requires a lead agency to call a scoping meeting for specified projects and provide a notice of the meeting to specified entities. CEQA requires the lead agency or a project proponent to file a notice of approval or determination with *the* Office of Planning and Research if the lead agency is a state agency or with the county clerk if the lead agency is a local agency. CEQA requires a public agency that has completed an EIR to file with the Office of Planning and Research a notice of completion.

CEQA requires a lead agency determining that an EIR is required for a project to send a notice of that determination to specified public agencies. CEQA requires a lead agency preparing an EIR, a negative declaration, or making a specified determination regarding a subsequent project to provide a public notice within a reasonable time period before the certification of the EIR, or the adoption of a negative declaration, or making the specified determination. CEQA requires those notices to be posted in the office of the county clerk in each county in which the project is located and requires the notices to remain posted for 30 days. CEQA requires the county clerk to post the notice within 24 hours of receipt.

This bill would additionally require the above mentioned notices to be filed with both the Office of Planning and Research and the county clerk and be posted by *the* county clerk for public review. The bill would require the county clerk to post the notices within one business day, as defined, of receipt and stamp on the notice the date on which the notices were actually posted. By expanding the services provided by the lead agency and the county clerk, this bill would impose a state-mandated local program. The bill would require the county clerk to post the notices for at least 30 days. The bill would require the Office of Planning and Research to post the notices on a publicly available online database established and maintained by the office. The bill would require the office to stamp the notices with the date on which the notices were actually posted for online review and would require the notices to be posted for at least 30 days. The bill would authorize the office to charge an administrative fee not to exceed $10 per notice filed. The bill would specify that a time period or limitation period specified by CEQA does not commence until the notice is actually posted for public review by the county clerk or is available in the online database, whichever is

later. The bill would require the notice of determination to be filed solely by the lead agency.

(2) CEQA authorizes, for a project that is determined by a state agency to be exempted from the requirements of CEQA, a state agency or a project proponent to file a notice of determination with the Office of Planning and Research. CEQA authorizes, for a project that is determined by a local agency to be exempted from the requirements of CEQA, a local agency or a project proponent to file a notice of determination with the county clerk of the county in which the project is located.

This bill would require that notice of determination be filed with both the Office of Planning and Research and the county clerk. By requiring a county clerk to receive and post that notice of determination filed by a state agency, this bill would impose a state-mandated local program. The bill would provide that notice of determination be filed by the lead agency only.

(3) This bill would require the Office of Planning and Research and the county clerk, after the posting of the notices filed with them, to return the notice to the filing agency with a notation of the period the notice was posted. By requiring a county clerk to return the notice, this bill would impose a state-mandated local program.

(4) CEQA establishes a procedure for the preparation and certification of the record of proceedings upon the filing of an action or proceeding challenging a lead agency's action on the grounds of noncompliance with CEQA.

This bill would require, until January 1, 2017, the lead agency, at the request of a project applicant, to, among other things, prepare a record of proceedings concurrently with the preparation of negative declarations, mitigated negative declarations, EIRs, or other environmental documents for specified projects. Because the bill would require a lead agency to prepare the record of proceedings as provided, this bill would impose a state-mandated local program. *The bill would condition, upon the consent of a lead agency that is a state agency, the application to state agency of the concurrent preparation of the record of proceedings.*

(5) CEQA defines "environment" and "significant effect on the environment" for its purposes. CEQA requires the EIR to include a detailed statement setting forth specified facts.

This bill would revise those definitions, as specified. This bill would additionally require the lead agency to include in the EIR a detailed

statement on any significant effects that may result from locating development near, or attracting people to, existing or reasonably foreseeable natural hazards or adverse environmental conditions. Because the lead agency would be required to undertake this additional consideration, this bill would impose a state-mandated local program.

(6) The bill would repeal certain exemptions from the requirements of CEQA related to the California Men's Colony West Facility, a prison ~~facilities~~ *facility* at or in the vicinity of Corcoran, *a* certain prison facility in the County of King, and the Napa Valley Wine Train.

(7) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: yes.

*The people of the State of California do enact as follows:*

SECTION 1. Section 21060.5 of the Public Resources Code is amended to read:

21060.5. "Environment" means the physical conditions that exist within the area that will be affected by a proposed project, including land, air, water, minerals, flora, fauna, noise, objects of historic or aesthetic significance, as well as the health and safety of people affected by the physical conditions at the location of a project.

SEC. 2. Section 21068 of the Public Resources Code is amended to read:

21068. "Significant effect on the environment" means a substantial, or potentially substantial, adverse change in the environment. "Significant effect on the environment" includes exposure of people, either directly or indirectly, to substantial existing or reasonably foreseeable natural hazard or adverse condition of the environment.

SEC. 3. Section 21080.01 of the Public Resources Code is repealed.

SEC. 4. Section 21080.02 of the Public Resources Code is repealed.

SEC. 5. Section 21080.03 of the Public Resources Code is repealed.

SEC. 6. Section 21080.04 of the Public Resources Code is repealed.

SEC. 7. Section 21080.5 of the Public Resources Code is amended to read:

21080.5. (a) Except as provided in Section 21158.1, when the regulatory program of a state agency requires a plan or other written documentation containing environmental information and complying with paragraph (3) of subdivision (d) to be submitted in support of an activity listed in subdivision (b), the plan or other written documentation may be submitted in lieu of the environmental impact report required by this division if the Secretary of the Natural Resources Agency has certified the regulatory program pursuant to this section.

(b) This section applies only to regulatory programs or portions thereof that involve either of the following:

(1) The issuance to a person of a lease, permit, license, certificate, or other entitlement for use.

(2) The adoption or approval of standards, rules, regulations, or plans for use in the regulatory program.

(c) A regulatory program certified pursuant to this section is exempt from Chapter 3 (commencing with Section 21100), Chapter 4 (commencing with Section 21150), and Section 21167, except as provided in Article 2 (commencing with Section 21157) of Chapter 4.5.

(d) To qualify for certification pursuant to this section, a regulatory program shall require the utilization of an interdisciplinary approach that will ensure the integrated use of the natural and social sciences in decisionmaking and that shall meet all of the following criteria:

(1) The enabling legislation of the regulatory program does both of the following:

(A) Includes protection of the environment among its principal purposes.

(B) Contains authority for the administering agency to adopt rules and regulations for the protection of the environment, guided by standards set forth in the enabling legislation.

(2) The rules and regulations adopted by the administering agency for the regulatory program do all of the following:

(A) Require that an activity will not be approved or adopted as proposed if there are feasible alternatives or feasible mitigation measures available that would substantially lessen a significant adverse effect that the activity may have on the environment.

(B) Include guidelines for the orderly evaluation of proposed activities and the preparation of the plan or other written documentation in a manner consistent with the environmental protection purposes of the regulatory program.

(C) Require the administering agency to consult with all public agencies that have jurisdiction, by law, with respect to the proposed activity.

(D) Require that final action on the proposed activity include the written responses of the issuing authority to significant environmental points raised during the evaluation process.

(E) Require the filing of a notice of the decision by the administering agency on the proposed activity pursuant to Section 21092.3.

(F) Require notice of the filing of the plan or other written documentation to be posted pursuant to Section 21092.3 and made to the public and to a person who requests, in writing, notification. The notification shall be made in a manner that will provide the public or a person requesting notification with sufficient time to review and comment on the filing.

(3) The plan or other written documentation required by the regulatory program does both of the following:

(A) Includes a description of the proposed activity with alternatives to the activity, and mitigation measures to minimize any significant adverse effect on the environment of the activity.

(B) Is available for a reasonable time for review and comment by other public agencies and the general public.

(e) (1) The Secretary of the Natural Resources Agency shall certify a regulatory program that the secretary determines meets all the qualifications for certification set forth in this section, and withdraw certification on determination that the regulatory program has been altered so that it no longer meets those qualifications. Certification and withdrawal of certification shall occur only after compliance with Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code.

(2) In determining whether or not a regulatory program meets the qualifications for certification set forth in this section, the

inquiry of the secretary shall extend only to the question of whether the regulatory program meets the generic requirements of subdivision (d). The inquiry may not extend to individual decisions to be reached under the regulatory program, including the nature of specific alternatives or mitigation measures that might be proposed to lessen any significant adverse effect on the environment of the activity.

(3) If the secretary determines that the regulatory program submitted for certification does not meet the qualifications for certification set forth in this section, the secretary shall adopt findings setting forth the reasons for the determination.

(f) After a regulatory program has been certified pursuant to this section, a proposed change in the program that could affect compliance with the qualifications for certification specified in subdivision (d) may be submitted to the Secretary of the Natural Resources Agency for review and comment. The scope of the secretary's review shall extend only to the question of whether the regulatory program meets the generic requirements of subdivision (d). The review may not extend to individual decisions to be reached under the regulatory program, including specific alternatives or mitigation measures that might be proposed to lessen any significant adverse effect on the environment of the activity. The secretary shall have 30 days from the date of receipt of the proposed change to notify the state agency whether the proposed change will alter the regulatory program so that it no longer meets the qualification for certification established in this section and will result in a withdrawal of certification as provided in this section.

(g) An action or proceeding to attack, review, set aside, void, or annul a determination or decision of a state agency approving or adopting a proposed activity under a regulatory program that has been certified pursuant to this section on the basis that the plan or other written documentation prepared pursuant to paragraph (3) of subdivision (d) does not comply with this section shall be commenced not later than 30 days from the date of the posting of notice of the approval or adoption of the activity pursuant to Section 21092.3.

(h) (1) An action or proceeding to attack, review, set aside, void, or annul a determination of the Secretary of the Natural Resources Agency to certify a regulatory program pursuant to this

section on the basis that the regulatory program does not comply with this section shall be commenced within 30 days from the date of certification by the secretary.

(2) In an action brought pursuant to paragraph (1), the inquiry shall extend only to whether there was a prejudicial abuse of discretion by the secretary. Abuse of discretion is established if the secretary has not proceeded in a manner required by law or if the determination is not supported by substantial evidence.

(i) For purposes of this section, a county agricultural commissioner is a state agency.

(j) For purposes of this section, an air quality management district or air pollution control district is a state agency, except that the approval, if any, by a district of a nonattainment area plan is subject to this section only if, and to the extent that, the approval adopts or amends rules or regulations.

(k) (1) The secretary, by July 1, 2004, shall develop a protocol for reviewing the prospective application of certified regulatory programs to evaluate the consistency of those programs with the requirements of this division. Following the completion of the development of the protocol, the secretary shall provide a report to the Senate Committee on Environmental Quality and the Assembly Committee on Natural Resources regarding the need for a grant of additional statutory authority authorizing the secretary to undertake a review of the certified regulatory programs.

(2) The secretary may update the protocol, and may update the report provided to the legislative committees pursuant to paragraph (1) and provide, in compliance with Section 9795 of the Government Code, the updated report to those committees if additional statutory authority is needed.

(3) The secretary shall provide a significant opportunity for public participation in developing or updating the protocol described in paragraph (1) or (2) including, but not limited to, at least two public meetings with interested parties. A notice of each meeting shall be provided at least 10 days prior to the meeting to a person who files a written request for a notice with the agency and to the Senate Committee on Environmental Quality and the Assembly Committee on Natural Resources.

SEC. 8. Section 21083.9 of the Public Resources Code is amended to read:

21083.9. (a) Notwithstanding Section 21080.4, 21104, or 21153, a lead agency shall ~~call~~ *conduct* at least one public scoping meeting for either of the following:

(1) A proposed project that may affect highways or other facilities under the jurisdiction of the Department of Transportation if the meeting is requested by the department. The lead agency shall call the scoping meeting as soon as possible, but not later than 30 days after receiving the request from the Department of Transportation.

(2) A project of statewide, regional, or areawide significance.

(b) The lead agency shall provide notice of at least one public scoping meeting held pursuant to paragraph (2) of subdivision (a) by posting a notice of meeting pursuant to Section 21092.3, and providing copies of the notice to all of the following:

(1) A county, city, or tribal land that borders on a county or city within which the project is located, unless otherwise designated annually by agreement between the lead agency and the county, city, or tribal government.

(2) A responsible agency.

(3) A public agency that has jurisdiction by law with respect to the project.

(4) A transportation planning agency or public agency required to be consulted pursuant to Section 21092.4.

(5) A public agency, organization, or individual who has filed a written request for the notice.

(c) For a public agency, organization, or individual that is required to be provided notice of a lead agency public meeting, the requirement for notice of a scoping meeting pursuant to subdivision (b) may be met by including the notice of a scoping meeting in the public meeting notice.

(d) A public scoping meeting that is held in the city or county within which the project is located pursuant to the federal National Environmental Policy Act of 1969 (42 U.S.C. Sec. 4321 et seq.) and the regulations adopted pursuant to that act shall be deemed to satisfy the requirement that a public scoping meeting be held for a project subject to paragraph (2) of subdivision (a) if the lead agency meets the notice requirements of subdivision (b) or ~~subdivision~~ (c).

(e) The referral of a proposed action to adopt or substantially amend a general plan to a city or county pursuant to paragraph (1)

of subdivision (a) of Section 65352 of the Government Code may be conducted concurrently with the public scoping meeting required pursuant to this section, and the city or county may submit its comments as provided pursuant to subdivision (b) of that section at the public scoping meeting.

SEC. 9. Section 21092 of the Public Resources Code is amended to read:

21092. (a) A lead agency that is preparing an environmental impact report or a negative declaration or making a determination pursuant to subdivision (c) of Section 21157.1 shall provide public notice of that fact within a reasonable period of time prior to certification of the environmental impact report, adoption of the negative declaration, or making the determination pursuant to subdivision (c) of Section 21157.1.

(b) (1) The notice shall specify the period during which comments will be received on the draft environmental impact report or negative declaration, and shall include the date, time, and place of any public meetings or hearings on the proposed project, a brief description of the proposed project and its location, the significant effects on the environment, if any, anticipated as a result of the project, the address where copies of the draft environmental impact report or negative declaration, and all documents referenced in the draft environmental impact report or negative declaration, are available for review, and a description of how the draft environmental impact report or negative declaration can be provided in an electronic format.

(2) This section shall not be construed in any manner that results in the invalidation of an action because of the alleged inadequacy of the notice content if there has been substantial compliance with the notice content requirements of this section.

(3) The notice required by this section shall be filed and posted pursuant to Section 21092.3 and given to the last known name and address of all organizations and individuals who have previously requested notice, and shall also be given by at least one of the following procedures:

(A) Publication, no fewer times than required by Section 6061 of the Government Code, by the public agency in a newspaper of general circulation in the area affected by the proposed project. If more than one area will be affected, the notice shall be published

in the newspaper of largest circulation from among the newspapers of general circulation in those areas.

(B) Posting of notice by the lead agency on- and off-site in the area where the project is to be located.

(C) Direct mailing to the owners and occupants of contiguous property shown on the latest equalized assessment roll.

(c) For a project involving the burning of municipal wastes, hazardous waste, or refuse-derived fuel, including, but not limited to, tires, meeting the qualifications of subdivision (d), notice shall be given to all organizations and individuals who have previously requested notice and shall also be given by at least the procedures specified in subparagraphs (A), (B), and (C) of paragraph (3) of subdivision (b). In addition, notification shall be given by direct mailing to the owners and occupants of property within one-fourth of a mile of any parcel or parcels on which is located a project subject to this subdivision.

(d) The notice requirements of subdivision (c) apply to both of the following:

(1) The construction of a new facility.

(2) The expansion of an existing facility that burns hazardous waste which would increase its permitted capacity by more than 10 percent. For purposes of this paragraph, the amount of expansion of an existing facility shall be calculated by comparing the proposed facility capacity with whichever of the following is applicable:

(A) The facility capacity approved in the facility's hazardous waste facilities permit pursuant to Section 25200 of the Health and Safety Code or its grant of interim status pursuant to Section 25200.5 of the Health and Safety Code, or the facility capacity authorized in any state or local agency permit allowing the construction or operation of a facility for the burning of hazardous waste, granted before January 1, 1990.

(B) The facility capacity authorized in the facility's original hazardous waste facilities permit, grant of interim status, or any state or local agency permit allowing the construction or operation of a facility for the burning of hazardous waste, granted on or after January 1, 1990.

(e) The notice requirements specified in subdivision (b) or (c) shall not preclude a public agency from providing additional notice by other means if the agency so desires, or from providing the

public notice required by this section at the same time and in the same manner as public notice otherwise required by law for the project.

SEC. 10. Section 21092.2 of the Public Resources Code is amended to read:

21092.2. (a) The notices required pursuant to Sections 21080.4, 21080.5, 21083.9, 21092, 21108, 21152, and 21161 shall be mailed to every person who has filed a written request for notices with either the clerk of the governing body or, if there is no governing body, the director of the agency. If the agency offers to provide the notices by email, upon filing a written request for notices, a person may request that the notices be provided to him or her by email. The request may also be filed with any other person designated by the governing body or director to receive these requests. The agency may require requests for notices to be annually renewed. The public agency may charge a fee, except to other public agencies, that is reasonably related to the costs of providing this service.

(b) Subdivision (a) shall not be construed in any manner that results in the invalidation of an action because of the failure of a person to receive a requested notice, if there has been substantial compliance with the requirements of this section.

(c) The notices required pursuant to Sections 21080.4 and 21161 shall be provided by the State Clearinghouse to any legislator in whose district the project has an environmental impact, if the legislator requests the notice and the State Clearinghouse has received it.

SEC. 11. Section 21092.3 of the Public Resources Code is amended to read:

21092.3. (a) The notices required pursuant to Sections 21080.4, 21080.5, 21083.9, 21092, 21108, 21152, and 21161 shall be filed with and posted for public review in the office of the county clerk of each county in which the project will be located and shall remain posted for a period of at least 30 days or the full duration of any time period under this division that may commence upon the filing of the notice, whichever is longer. The clerk shall, thereafter, return the notice to the filing agency with a notation of the period it was posted. The county clerk shall post the notices within one business day of receipt and shall stamp on the notice the date on which it was actually posted for public review.

(b) The notices required pursuant to Sections 21080.4, 21080.5, 21083.9, 21092, 21108, 21152, and 21161 shall be filed with, and posted on, a publicly available, online database established and maintained by the Office of Planning and Research. The online database shall include the capability to view and download the notices in the form filed with the Office of Planning and Research. Notices filed in the online database shall be stamped by the Office of Planning and Research with the date on which they were actually posted for online review by the public, and shall remain electronically available in the database for a minimum of 10 years. The Office of Planning and Research shall retain the physical copy of the notice for at least 30 days or for the full duration of a time period required pursuant to this division that may commence upon the filing of the notice, whichever is longer. The Office of Planning and Research shall, thereafter, return the notice to the filing agency with a notation of the period it was posted. The Office of Planning and Research shall post the notices in its online database within one business day of receipt. The Office of Planning and Research may require the agency filing the notice to pay an administrative fee not to exceed ten dollars ($10) per notice filed for the purposes of maintaining its online database and implementing its duties under this section. The agency filing the notice may recover its filing costs from the person specified in subdivision (b) or (c) of Section 21065, as reflected in the agency's record of proceedings.

(c) Any time periods or limitation periods established under this division that are subject to the notices posted under this section shall not commence until the notice is actually posted for public review by the county clerk and in the online database maintained by the Office of Planning and Research. If the county clerk and the Office of Planning and Research posts the notice on different days, the time period shall run from the date of the later posting.

(d) For the purposes of this section, "business days" does not include Saturday, Sunday, or a day observed as a holiday by the state government.

SEC. 12. Section 21100 of the Public Resources Code is amended to read:

21100. (a) All lead agencies shall prepare, or cause to be prepared by contract, and certify the completion of, an environmental impact report on any project which they propose to carry out or approve that may have a significant effect on the

environment. Whenever feasible, a standard format shall be used for environmental impact reports.

(b) The environmental impact report shall include a detailed statement setting forth all of the following:

(1) All significant effects on the environment of the proposed project.

(2) In a separate section:

(A) Any significant effect on the environment that cannot be avoided if the project is implemented.

(B) Any significant effect on the environment that would be irreversible if the project is implemented.

(3) Mitigation measures proposed to minimize significant effects on the environment, including, but not limited to, measures to reduce the wasteful, inefficient, and unnecessary consumption of energy.

(4) Alternatives to the proposed project.

(5) The growth-inducing impact of the proposed project.

(6) Any significant effects that may result from locating development near, or attracting people to, existing or reasonably foreseeable natural hazards or adverse environmental conditions.

(c) The report shall also contain a statement briefly indicating the reasons for determining that various effects on the environment of a project are not significant and consequently have not been discussed in detail in the environmental impact report.

(d) For purposes of this section, any significant effect on the environment shall be limited to substantial, or potentially substantial, adverse changes in physical conditions which exist within the area as defined in Section 21060.5.

(e) Previously approved land use documents, including, but not limited to, general plans, specific plans, and local coastal plans, may be used in cumulative impact analysis.

SEC. 13. Section 21108 of the Public Resources Code is amended to read:

21108. (a) If a state agency approves or determines to carry out a project that is subject to this division, the state agency shall file notice of that approval or that determination with the Office of Planning and Research and with the county clerk of each county in which the project will be located. The notice shall identify the person or persons in subdivision (b) or (c) of Section 21065, as reflected in the agency's record of proceedings, and indicate the

determination of the state agency whether the project will, or will not, have a significant effect on the environment and shall indicate whether an environmental impact report has been prepared pursuant to this division.

(b) If a state agency determines that a project is not subject to this division pursuant to subdivision (b) of Section 21080 or Section 21172, and the state agency approves or determines to carry out the project, the state agency may file notice of the determination with the county clerk of each county in which the project will be located and the Office of Planning and Research. A notice filed pursuant to this subdivision shall identify the person or persons in subdivision (b) or (c) of Section 21065, as reflected in the agency's record of proceedings. A notice filed pursuant to this subdivision by a person specified in subdivision (b) or (c) of Section 21065 shall have a certificate of determination attached to it issued by the state agency responsible for making the determination that the project is not subject to this division pursuant to subdivision (b) of Section 21080 or pursuant to Section 21172. The certificate of determination may be in the form of a certified copy of an existing document or record of the state agency.

SEC. 14. Section 21152 of the Public Resources Code is amended to read:

21152. (a) If a local agency approves or determines to carry out a project that is subject to this division, the local agency shall file notice of the approval or the determination within five working days after the approval or determination becomes final, with the county clerk of each county in which the project will be located and with the Office of Planning and Research. The notice shall identify the person or persons in subdivision (b) or (c) of Section 21065, as reflected in the agency's record of proceedings, and indicate the determination of the local agency whether the project will, or will not, have a significant effect on the environment and shall indicate whether an environmental impact report has been prepared pursuant to this division. The notice shall also include certification that the final environmental impact report, if one was prepared, together with comments and responses, is available to the general public.

(b) If a local agency determines that a project is not subject to this division pursuant to subdivision (b) of Section 21080 or pursuant to Section 21172, and the local agency approves or

determines to carry out the project, the local agency may file a notice of the determination with the county clerk of each county in which the project will be located and the Office of Planning and Research. A notice filed pursuant to this subdivision shall identify the person or persons in subdivision (b) or (c) of Section 21065, as reflected in the agency's record of proceedings. A notice filed pursuant to this subdivision shall have a certificate of determination attached to it issued by the local agency responsible for making the determination that the project is not subject to this division pursuant to subdivision (b) of Section 21080 or Section 21172. The certificate of determination may be in the form of a certified copy of an existing document or record of the local agency.

SEC. 15. Section 21161 of the Public Resources Code is amended to read:

21161. Whenever a public agency has completed an environmental impact report, it shall cause a notice of completion of that report to be filed with the county clerk of each county in which the project will be located and the Office of Planning and Research. The notice of completion shall briefly identify the project and shall indicate that an environmental impact report has been prepared. The notice of completion shall identify the project location by latitude and longitude. Failure to file the notice required by this section shall not affect the validity of a project.

SEC. 16. Section 21167.6 of the Public Resources Code is amended to read:

21167.6. Notwithstanding any other law, in all actions or proceedings brought pursuant to Section 21167, except as provided for in Section 21167.6.2 or those involving the Public Utilities Commission, all of the following shall apply:

(a) At the time that the action or proceeding is filed, the plaintiff or petitioner shall file a request that the respondent public agency prepare the record of proceedings relating to the subject of the action or proceeding. The request, together with the complaint or petition, shall be served personally upon the public agency not later than 10 business days from the date that the action or proceeding was filed.

(b) (1) The public agency shall prepare and certify the record of proceedings not later than 60 days from the date that the request specified in subdivision (a) was served upon the public agency. Upon certification, the public agency shall lodge a copy of the

record of proceedings with the court and shall serve on the parties notice that the record of proceedings has been certified and lodged with the court. The parties shall pay any reasonable costs or fees imposed for the preparation of the record of proceedings in conformance with any law or rule of court.

(2) The plaintiff or petitioner may elect to prepare the record of proceedings or the parties may agree to an alternative method of preparation of the record of proceedings, subject to certification of its accuracy by the public agency, within the time limit specified in this subdivision.

(c) The time limit established by subdivision (b) may be extended only upon the stipulation of all parties who have been properly served in the action or proceeding or upon order of the court. Extensions shall be liberally granted by the court when the size of the record of proceedings renders infeasible compliance with that time limit. There is no limit on the number of extensions that may be granted by the court, but no single extension shall exceed 60 days unless the court determines that a longer extension is in the public interest.

(d) If the public agency fails to prepare and certify the record within the time limit established in paragraph (1) of subdivision (b), or any continuances of that time limit, the plaintiff or petitioner may move for sanctions, and the court may, upon that motion, grant appropriate sanctions.

(e) The record of proceedings shall include, but is not limited to, all of the following items:

(1) All project application materials.

(2) All staff reports and related documents prepared by the respondent public agency with respect to its compliance with the substantive and procedural requirements of this division and with respect to the action on the project.

(3) All staff reports and related documents prepared by the respondent public agency and written testimony or documents submitted by any person relevant to any findings or statement of overriding considerations adopted by the respondent agency pursuant to this division.

(4) Any transcript or minutes of the proceedings at which the decisionmaking body of the respondent public agency heard testimony on, or considered any environmental document on, the project, and any transcript or minutes of proceedings before any

advisory body to the respondent public agency that were presented to the decisionmaking body prior to action on the environmental documents or on the project.

(5) All notices issued by the respondent public agency to comply with this division or with any other law governing the processing and approval of the project.

(6) All written comments received in response to, or in connection with, environmental documents prepared for the project, including responses to the notice of preparation.

(7) All written evidence or correspondence submitted to, or transferred from, the respondent public agency with respect to compliance with this division or with respect to the project.

(8) Any proposed decisions or findings submitted to the decisionmaking body of the respondent public agency by its staff, or the project proponent, project opponents, or other persons.

(9) The documentation of the final public agency decision, including the final environmental impact report, mitigated negative declaration, or negative declaration, and all documents, in addition to those referenced in paragraph (3), cited or relied on in the findings or in a statement of overriding considerations adopted pursuant to this division.

(10) Any other written materials relevant to the respondent public agency's compliance with this division or to its decision on the merits of the project, including the initial study, any drafts of any environmental document, or portions thereof, that have been released for public review, and copies of studies or other documents relied upon in any environmental document prepared for the project and either made available to the public during the public review period or included in the respondent public agency's files on the project, and all internal agency communications, including staff notes and memoranda related to the project or to compliance with this division.

(11) The full written record before any inferior administrative decisionmaking body whose decision was appealed to a superior administrative decisionmaking body prior to the filing of litigation.

(f) In preparing the record of proceedings, the party preparing the record shall strive to do so at reasonable cost in light of the scope of the record.

(g) The clerk of the superior court shall prepare and certify the clerk's transcript on appeal not later than 60 days from the date

that the notice designating the papers or records to be included in the clerk's transcript was filed with the superior court, if the party or parties pay any costs or fees for the preparation of the clerk's transcript imposed in conformance with any law or rules of court. Nothing in this subdivision precludes an election to proceed by appendix, as provided in Rule 8.124 of the California Rules of Court.

(h) Extensions of the period for the filing of any brief on appeal may be allowed only by stipulation of the parties or by order of the court for good cause shown. Extensions for the filing of a brief on appeal shall be limited to one 30-day extension for the preparation of an opening brief, and one 30-day extension for the preparation of a responding brief, except that the court may grant a longer extension or additional extensions if it determines that there is a substantial likelihood of settlement that would avoid the necessity of completing the appeal.

(i) At the completion of the filing of briefs on appeal, the appellant shall notify the court of the completion of the filing of briefs, whereupon the clerk of the reviewing court shall set the appeal for hearing on the first available calendar date.

(j) This section shall remain in effect only until January 1, 2017, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2017, deletes or extends that date.

SEC. 17. Section 21167.6 is added to the Public Resources Code, to read:

21167.6. Notwithstanding any other law, in all actions or proceedings brought pursuant to Section 21167, except those involving the Public Utilities Commission, all of the following shall apply:

(a) At the time that the action or proceeding is filed, the plaintiff or petitioner shall file a request that the respondent public agency prepare the record of proceedings relating to the subject of the action or proceeding. The request, together with the complaint or petition, shall be served personally upon the public agency not later than 10 business days from the date that the action or proceeding was filed.

(b) (1) The public agency shall prepare and certify the record of proceedings not later than 60 days from the date that the request specified in subdivision (a) was served upon the public agency. Upon certification, the public agency shall lodge a copy of the

record of proceedings with the court and shall serve on the parties notice that the record of proceedings has been certified and lodged with the court. The parties shall pay any reasonable costs or fees imposed for the preparation of the record of proceedings in conformance with any law or rule of court.

(2) The plaintiff or petitioner may elect to prepare the record of proceedings or the parties may agree to an alternative method of preparation of the record of proceedings, subject to certification of its accuracy by the public agency, within the time limit specified in this subdivision.

(c) The time limit established by subdivision (b) may be extended only upon the stipulation of all parties who have been properly served in the action or proceeding or upon order of the court. Extensions shall be liberally granted by the court when the size of the record of proceedings renders infeasible compliance with that time limit. There is no limit on the number of extensions that may be granted by the court, but no single extension shall exceed 60 days unless the court determines that a longer extension is in the public interest.

(d) If the public agency fails to prepare and certify the record within the time limit established in paragraph (1) of subdivision (b), or any continuances of that time limit, the plaintiff or petitioner may move for sanctions, and the court may, upon that motion, grant appropriate sanctions.

(e) The record of proceedings shall include, but is not limited to, all of the following items:

(1) All project application materials.

(2) All staff reports and related documents prepared by the respondent public agency with respect to its compliance with the substantive and procedural requirements of this division and with respect to the action on the project.

(3) All staff reports and related documents prepared by the respondent public agency and written testimony or documents submitted by any person relevant to any findings or statement of overriding considerations adopted by the respondent agency pursuant to this division.

(4) Any transcript or minutes of the proceedings at which the decisionmaking body of the respondent public agency heard testimony on, or considered any environmental document on, the project, and any transcript or minutes of proceedings before any

advisory body to the respondent public agency that were presented to the decisionmaking body prior to action on the environmental documents or on the project.

(5) All notices issued by the respondent public agency to comply with this division or with any other law governing the processing and approval of the project.

(6) All written comments received in response to, or in connection with, environmental documents prepared for the project, including responses to the notice of preparation.

(7) All written evidence or correspondence submitted to, or transferred from, the respondent public agency with respect to compliance with this division or with respect to the project.

(8) Any proposed decisions or findings submitted to the decisionmaking body of the respondent public agency by its staff, or the project proponent, project opponents, or other persons.

(9) The documentation of the final public agency decision, including the final environmental impact report, mitigated negative declaration, or negative declaration, and all documents, in addition to those referenced in paragraph (3), cited or relied on in the findings or in a statement of overriding considerations adopted pursuant to this division.

(10) Any other written materials relevant to the respondent public agency's compliance with this division or to its decision on the merits of the project, including the initial study, any drafts of any environmental document, or portions thereof, that have been released for public review, and copies of studies or other documents relied upon in any environmental document prepared for the project and either made available to the public during the public review period or included in the respondent public agency's files on the project, and all internal agency communications, including staff notes and memoranda related to the project or to compliance with this division.

(11) The full written record before any inferior administrative decisionmaking body whose decision was appealed to a superior administrative decisionmaking body prior to the filing of litigation.

(f) In preparing the record of proceedings, the party preparing the record shall strive to do so at reasonable cost in light of the scope of the record.

(g) The clerk of the superior court shall prepare and certify the clerk's transcript on appeal not later than 60 days from the date

that the notice designating the papers or records to be included in the clerk's transcript was filed with the superior court, if the party or parties pay any costs or fees for the preparation of the clerk's transcript imposed in conformance with any law or rules of court. Nothing in this subdivision precludes an election to proceed by appendix, as provided in Rule 8.124 of the California Rules of Court.

(h) Extensions of the period for the filing of any brief on appeal may be allowed only by stipulation of the parties or by order of the court for good cause shown. Extensions for the filing of a brief on appeal shall be limited to one 30-day extension for the preparation of an opening brief, and one 30-day extension for the preparation of a responding brief, except that the court may grant a longer extension or additional extensions if it determines that there is a substantial likelihood of settlement that would avoid the necessity of completing the appeal.

(i) At the completion of the filing of briefs on appeal, the appellant shall notify the court of the completion of the filing of briefs, whereupon the clerk of the reviewing court shall set the appeal for hearing on the first available calendar date.

(j) This section shall become operative on January 1, 2017.

SEC. 18. Section 21167.6.2 is added to the Public Resources Code, to read:

21167.6.2. (a) *(1)* Notwithstanding Section 21167.6, for a project described in subdivision (f), upon the written request of a project applicant received no later than 30 days after the date that a lead agency makes a determination pursuant to subdivision (a) of Section 21080.1, Section 21094.5, or Chapter 4.2 (commencing with Section 21155), the lead agency shall prepare and certify the record of proceedings in the following manner:

~~(1)~~

*(A)* The lead agency for the project shall prepare the record of proceedings pursuant to this division concurrently with the administrative process.

~~(2)~~

*(B)* All documents and other materials placed in the record of proceedings that are not otherwise exempted from public disclosure shall be posted on, and be downloadable from, an Internet Web site maintained by the lead agency commencing with the date of the release of the draft environmental document for a project

specified in subdivision (f). If the lead agency cannot maintain an Internet Web site with the information required pursuant to this section, the lead agency shall provide a link on the agency's Internet Web site to that information.

~~(3) Except as provided in subdivision (r) of Section 6254 of the Government Code, Section 6254.10 of the Government Code, Section 304 of the National Historic Preservation Act (16 U.S.C. Sec. 470w-3), or subdivision (d) of Section 15120 of Title 14 of the California Code of Regulations, the~~

*(C) The* lead agency shall make available to the public, in a readily accessible electronic format, the draft environmental document for a project specified in subdivision (f) and all other documents submitted to, cited by, or relied on by, the lead agency in the preparation of the draft environmental document for a project specified in subdivision (f).

~~(4)~~

*(D)* A document prepared by the lead agency or submitted by the applicant after the date of the release of the draft environmental document for a project specified in subdivision (f) that is a part of the record of the proceedings shall be made available to the public in a readily accessible electronic format within five business days after the document is released or received by the lead agency.

~~(5)~~

*(E)* The lead agency shall encourage written comments on the project to be submitted in a readily accessible electronic format, and shall make any comment available to the public in a readily accessible electronic format within five days of its receipt.

~~(6)~~

*(F)* Within seven business days after the receipt of any comment that is not in an electronic format, the lead agency shall convert that comment into a readily accessible electronic format and make it available to the public in that format.

~~(7)~~

*(G)* The lead agency shall certify the record of proceedings within 30 days after the filing of the notice required pursuant to Section 21108 or 21152.

*(2) This subdivision does not require the disclosure or posting of a trade secret, as defined in Section 6254.7 of the Government Code, information about the location of archaeological sites or sacred lands, or other information that is subject to the exemption*

*from disclosures specified in Section 6254 of the Government Code.*

(b) Any dispute regarding the record of proceedings shall be resolved by the court in an action or proceeding brought pursuant to Section 21167. The parties shall meet and confer in good-faith effort to resolve any dispute before seeking resolution in court.

(c) The content of the record of proceedings shall be as specified in subdivision (e) of Section 21167.6.

(d) Subdivisions (g) to (i), inclusive, of Section 21167.6 are applicable to an appeal of a decision in an action or proceeding brought pursuant to Section 21167.

(e) The negative declaration, mitigated negative declaration, draft and final environmental impact report, or other environmental document for a project specified in subdivision (f) shall include a notice in no less than 12-point type stating the following:

"THIS NEGATIVE DECLARATION, MITIGATED NEGATIVE DECLARATION, EIR, OR ENVIRONMENTAL DOCUMENT IS SUBJECT TO SECTION 21167.6.2 OF THE PUBLIC RESOURCES CODE, WHICH REQUIRES THE RECORD OF PROCEEDINGS FOR THIS PROJECT TO BE PREPARED CONCURRENTLY WITH THE ADMINISTRATIVE PROCESS, DOCUMENTS PREPARED BY, OR SUBMITTED TO, THE LEAD AGENCY TO BE POSTED ON THE LEAD AGENCY'S INTERNET WEB SITE, AND THE LEAD AGENCY TO ENCOURAGE WRITTEN COMMENTS ON THE PROJECT TO BE SUBMITTED TO THE LEAD AGENCY IN A READILY ACCESSIBLE ELECTRONIC FORMAT."

(f) This section applies to the record of proceedings for the preparation of a negative declaration, mitigated negative declaration, environmental impact report, or other environmental document prepared for any of the following:

(1) A project determined to be of statewide, regional, or areawide environmental significance pursuant to subdivision (d) of Section 21083.

(2) A project subject to Section 21094.5 or Chapter 4.2 (commencing with Section 21155).

(3) (A) A project, other than one described in paragraphs (1) and (2), for which the lead agency consents to prepare the record of proceedings pursuant to this paragraph.

(B) The lead agency shall respond to a request by the project applicant within 10 business days from the date that the request pursuant to subdivision (a) is received by the lead agency.

(C) A project applicant and the lead agency may mutually agree, in writing, to extend the time period for the lead agency to respond pursuant to subparagraph (B), but they shall not extend that period beyond the commencement of the public review period for the proposed negative declaration, mitigated negative declaration, or draft environmental impact report.

(D) The request to prepare a record of proceedings pursuant to this paragraph shall be deemed denied if the lead agency fails to respond within 10 business days of receiving the request or within the time period agreed upon pursuant to subparagraph (C), whichever ends later.

~~(g) The project applicant shall reimburse the lead agency for the costs incurred in compliance with this section in a manner specified by the lead agency, and a plaintiff or petitioner in an action or proceeding filed pursuant to Section 21167, if any, is not required to pay these costs.~~

*(g) For a lead agency that is a state agency, the preparation of the record of proceedings pursuant to this section applies if the state agency consents to the preparation of the record of proceedings pursuant to this section.*

*(h) The written request of the applicant submitted pursuant to subdivision (a) shall include an agreement to pay all of the lead agency's costs in preparing and certifying the record of proceedings pursuant to this section and complying with the requirements of this section in a manner specified by the lead agency.*

~~(h)~~

*(i)* The costs of preparing the record of proceedings pursuant to this section and complying with the requirements of this section are not recoverable costs pursuant to Section 1033 of the Code of Civil Procedure.

~~(i)~~

*(j)* This section shall remain in effect only until January 1, 2017, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2017, deletes or extends that date.

SEC. 19. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because a local agency or school district has the authority to levy service charges, fees, or assessments sufficient to pay for the program or level of service mandated by this act, within the meaning of Section 17556 of the Government Code.

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# ATTACHMENT 3E

## SB 731 (Steinberg)
## Environment: California Environmental Quality

### Summary
This bill would state the intent of the Legislature to enact legislation revising the California Environmental Quality Act (CEQA) and to provide $30,000,000 to the Strategic Growth Council annually to provide planning incentive grants to local and regional agencies to update and implement general plans, sustainable communities strategies, and smart growth plans.

### Background
CEQA is the primary state law requiring public officials to understand and consider the environmental consequences of their decisions before they make them. CEQA requires a lead agency to complete an EIR on a project that might have a significant effect on the environment, and either approve that it may have a significant effect on the environment or adopt a negative declaration if it finds that the project will not have a negative effect. CEQA also requires a lead agency to prepare a mitigated negative declaration for a project that may have a significant effect on the environment if revisions in the project would avoid that effect.

For a number of years, certain stakeholders have urged that CEQA needs to be reformed to reduce delay, uncertainty, and unjustified adverse impacts on industrial and other developments. In response to repeated calls for CEQA reform and over 27 bills addressing the issue, Senator Steinberg introduced SB 731 on the last day to submit bills for the current Legislative session. Though the bill does not yet contain substantive language, it is intended as the vehicle for CEQA reform.

The potential impact of any final CEQA reform legislation could significantly impact the District. SCAQMD prepares CEQA documents for most rules and rule amendments, plan amendments, and projects for which SCAQMD is the lead agency. Also, staff prepares comments on numerous CEQA documents prepared by other lead agencies, as reflected in the monthly CEQA report provided to the Governing Board.

**Status**: March 13, 2013 – Referred to Committee on Rules.

### Specific Provisions
While the bill does not set forth any specific statutory language, it identifies several areas of targeted change, most notably:

- Facilitating infill development

- Establishing uniform thresholds of significance for noise, aesthetics, parking and traffic LOS
- Allowing for limited review of specified "beneficial" projects
- Establishing uniform thresholds of significance for noise, aesthetics, parking and traffic LOS
- Avoiding duplicative environmental review
- Establishing CEQA litigation reforms
- Specifically identifies that a standards-based approach will not be part of the legislative changes.

**Impacts on SCAQMD's Mission, Operations or Initiatives**:
Given the scope of potential reform bills introduced with both beneficial and detrimental elements from the SCAQMD's perspective, SB 731 provides the District an opportunity to share its input and perspective before CEQA reform statutory language is finalized.

Staff recommends WORKING WITH THE AUTHOR to help ensure CEQA reform legislation will include measures beneficial to the SCAQMD's interests. Specifically, staff recommends initiating the conversation with the Author and other legislative leaders by sharing with them Staff's Proposals for CEQA Reform.

**Recommended Position:** WORK WITH AUTHOR

# ATTACHMENT 3F

## SENATE BILL No. 731

**Introduced by Senator Steinberg**

February 22, 2013

An act relating to the environment.

LEGISLATIVE COUNSEL'S DIGEST

SB 731, as introduced, Steinberg. Environment: California Environmental Quality Act and sustainable communities strategy.

The California Environmental Quality Act (CEQA) requires a lead agency, as defined, to prepare, or cause to be prepared, and certify the completion of, an environmental impact report (EIR) on a project that it proposes to carry out or approve that may have a significant effect on the environment or to adopt a negative declaration if it finds that the project will not have that effect. CEQA also requires a lead agency to prepare a mitigated negative declaration for a project that may have a significant effect on the environment if revisions in the project would avoid or mitigate that effect and there is no substantial evidence that the project, as revised, would have a significant effect on the environment.

This bill would state the intent of the Legislature to enact legislation revising CEQA to, among other things, provide greater certainty for smart infill development, streamline the law for specified projects, and establish a threshold of significance for specified impacts.

Existing law requires the regional transportation plan for regions of the state with a metropolitan planning organization to each adopt a sustainable communities strategy, as part of their regional transportation plan, as specified, designed to achieve certain goals for the reduction of greenhouse gas emissions from automobiles and light trucks in a region. Existing law establishes the Strategic Growth Council to manage

and award grants and loans to support the planning and development of sustainable communities strategies.

This bill would state the intent of the Legislature to provide $30,000,000 annually to the council for the purposes of providing planning incentive grants to local and regional agencies to update and implement general plans, sustainable communities strategies, and smart growth plans.

Vote: majority. Appropriation: no. Fiscal committee: no. State-mandated local program: no.

*The people of the State of California do enact as follows:*

SECTION 1. (a) It is the intent of the Legislature to enact legislation to adopt provisions of Chapter 3 (commencing with Section 15000) of Division 6 of Title 14 of the California Code of Regulations (CEQA Guidelines) that are intended to provide greater certainty for smart infill development, such as Section 15183.3 of the CEQA Guidelines and related appendices that implement Chapter 469 of the Statutes of 2011. It is further the intent of the Legislature to explore amendments to expand the definition of "infill" and to accommodate infill development in the Central Valley.

(b) It is the intent of the Legislature to explore amendments to the California Environmental Quality Act (Division 13 (commencing with Section 21000) of the Public Resources Code), to further streamline the law for renewable energy projects, advanced manufacturing projects, transit, bike, and pedestrian projects, and renewable energy transmission projects.

(c) (1) It is the intent of the Legislature to update CEQA to establish a threshold of significance for noise, aesthetics, parking, and traffic levels of service, and thresholds relating to these land use impacts, so that project meeting those thresholds are not subject to further environmental review for those environmental impacts. It is further the intent of the Legislature to review other similar land-use- related impacts to determine if other thresholds of significance can be set.

(2) It is not the intent of the Legislature to affect authority, consistent with CEQA, for a local agency to impose its own, more stringent thresholds.

(3) It is not the intent of the Legislature to replace full CEQA analysis with state or local standards, with the exception of the land use standards described in paragraph (1).

(d) It is the intent of the Legislature to amend Section 65456, which exempts from CEQA projects undertaken pursuant to a specific plan for which an EIR has been prepared, unless conditions specified under Section 21166 of the Public Resources Code have occurred, to define with greater specificity what "new information" means, and to avoid duplicative CEQA review for projects and activities that comply with that plan. It is further the intent of the Legislature to review the possibility of defining other types of plans to determine if similar treatment could be applied to those plans or portions of those plans that are consistent with sustainable communities strategies adopted pursuant to Section 65080 of the Government Code or that have had a certified EIR within the past five years.

(e) It is the intent of the Legislature to enact amendments to Section 21168.9 to establish clearer procedures for a trial court to remand to a lead agency for remedying only those portions of an EIR, negative declaration, or mitigated negative declaration found to be in violation of CEQA, while retaining those portions that are not in violation so that the violations can be corrected, recirculated for public comment, and completed more efficiently and expeditiously. It is further the intent of the Legislature to explore options under which a court could allow project approvals to remain in place, and for projects to proceed.

(f) It is the intent of the Legislature to amend Section 21091 of the Public Resources Code and related provisions of law to establish clear statutory rules under which "late hits" and "document dumps" are prohibited or restricted prior to certification of an EIR, if a project proponent or lead agency has not substantively changed the draft EIR or substantively modified the project.

(g) It is the intent of the Legislature to provide $30 million annually to the Strategic Growth Council for the purposes of providing planning incentive grants to local and regional agencies to update and implement general plans, sustainable communities

strategies, and smart growth plans pursuant to Chapter 728 of the Statutes of 2008.

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# ATTACHMENT 3G

**SB 787 (Berryhill)**
**Environmental quality: the Sustainable Environmental Protection Act.**

**Summary:** This bill would enact the Sustainable Environmental Protection Act and would specify the environmental review required pursuant to the California Environmental Quality Act (CEQA) for projects related to specified environmental topical areas.

**Background:** CEQA is the primary state law requiring public officials to understand and consider the environmental consequences of their decisions before they make them. CEQA requires a lead agency to complete an EIR on a project that might have a significant effect on the environment, and either approve that it may have a significant effect on the environment or adopt a negative declaration if it finds that the project will not have a negative effect. CEQA also requires a lead agency to prepare a mitigated negative declaration for a project that may have a significant effect on the environment if revisions in the project would avoid that effect.

**Status**: Set for hearing, April 17 – Senate Environmental Quality

**Specific Provisions:**
For a judicial action or proceeding filed challenging an action taken by a lead agency on the ground of noncompliance with CEQA, the bill would prohibit a cause of action that (1) alleges noncompliance with CEQA based on any topical area or criteria for which compliance obligations are identified or (2) challenges the environmental document based on noncompliance with CEQA if: (A) the environmental document discloses compliance with applicable environmental law, (B) the project conforms with the use designation, density, or building intensity in an applicable plan, as defined, and (C) the project approval incorporates applicable mitigation requirements into the environmental document. The bill would provide that the Sustainable Environmental Protection Act only applies if the lead agency or project applicant has agreed to provide to the public in a readily accessible electronic format an annual compliance report prepared pursuant to the mitigation monitoring and reporting program.

**Impacts on SCAQMD's Mission, Operations or Initiatives**: This is the same as the "standards-based approach" previously introduced by Senator Rubio. Under this approach, if a project were to be in compliance with existing laws then no CEQA analysis would be required. For example, a project complying with the General Plan would not require a CEQA analysis. However, it should be noted that projects are already required to comply with the law. SB 787 completely guts CEQA law which makes particularized findings of significant environmental impacts and their mitigation. As a "give" to environmentalists, the bill also requires publishing an annual compliance report online; however, CEQA analyses and mitigation requirements are already available to the public through public information requests. This is a poor bargain to exchange the loss of CEQA protections for.

**Recommended Position: OPPOSE**

# ATTACHMENT 3H

## SENATE BILL No. 787

**Introduced by Senator Berryhill**

February 22, 2013

An act to add Division 13.6 (commencing with Section 21200) to the Public Resources Code, relating to environmental quality.

LEGISLATIVE COUNSEL'S DIGEST

SB 787, as introduced, Berryhill. Environmental quality: the Sustainable Environmental Protection Act.

The California Environmental Quality Act (CEQA) requires a lead agency, as defined, to prepare, or cause to be prepared, and certify the completion of, an environmental impact report (EIR) on a project that it proposes to carry out or approve that may have a significant effect on the environment or to adopt a negative declaration if it finds that the project will not have that effect. CEQA also requires a lead agency to prepare a mitigated negative declaration for a project that may have a significant effect on the environment if revisions in the project would avoid or mitigate that effect and there is no substantial evidence that the project, as revised, would have a significant effect on the environment.

Existing law establishes regulations related to numerous environmental issues.

This bill would enact the Sustainable Environmental Protection Act and would specify the environmental review required pursuant to CEQA for projects related to specified environmental topical areas. For a judicial action or proceeding filed challenging an action taken by a lead agency on the ground of noncompliance with CEQA, the bill would prohibit a cause of action that (1) alleges noncompliance with CEQA based on any topical area or criteria for which compliance obligations are identified or (2) challenges the environmental document based on

noncompliance with CEQA if: (A) the environmental document discloses compliance with applicable environmental law, (B) the project conforms with the use designation, density, or building intensity in an applicable plan, as defined, and (C) the project approval incorporates applicable mitigation requirements into the environmental document. The bill would provide that the Sustainable Environmental Protection Act only applies if the lead agency or project applicant has agreed to provide to the public in a readily accessible electronic format an annual compliance report prepared pursuant to the mitigation monitoring and reporting program.

Because this bill would impose additional duties on local agencies, it would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: yes.

*The people of the State of California do enact as follows:*

SECTION 1. Division 13.6 (commencing with Section 21200) is added to the Public Resources Code, to read:

## DIVISION 13.6. SUSTAINABLE ENVIRONMENTAL PROTECTION ACT

21200. This division shall be known and may be cited as the Sustainable Environmental Protection Act.

21200.5. The Legislature finds and declares all of the following:

(a) The Legislature adopted the California Environmental Quality Act (Division 13 (commencing with Section 21000)) (CEQA) in 1970 in recognition that the maintenance of a quality environment for the people of this state is a matter of statewide concern.

(b) Guidelines implementing CEQA have evolved and expanded, and currently provide that project impacts be evaluated based on 84 criteria covering the following 17 environmental topical areas:

(1) Air quality.

(2) Biological resources, including protected species and habitat types.
(3) Cultural resources, including archaeological resources.
(4) Geology and soils, including seismic and landslide risk.
(5) Greenhouse gas emissions.
(6) Hazards and hazardous materials, including toxic chemical exposures, brownfields or contaminated site issues, and accident risks.
(7) Hydrology and water quality, including flooding and sea level rise.
(8) Land use planning, including consistency with land use plans.
(9) Public services, including fire and police protection, schools, parks, and other public facilities.
(10) Traffic and transportation, including transit, vehicular, bicycle, and pedestrian transportation, emergency access, and roadway safety.
(11) Utilities and service systems, including wastewater, water supply, stormwater, landfill, and waste management systems.
(12) Aesthetics.
(13) Agriculture and forestry resources.
(14) Mineral resource availability.
(15) Noise.
(16) Population and housing growth.
(17) Recreational resources.

(c) In the years before and the 40 years following the enactment of CEQA, Congress and the Legislature have each adopted more than 100 laws to protect environmental quality in those environmental topical areas required to be independently mitigated under CEQA described in subdivision (b). The Legislature has enacted environmental protection laws that are as or more stringent than federal law, and California environmental laws are often at the cutting edge of environmental protection nationally and even globally. These environmental protection laws, all enacted after 1970, include, but are not limited to, the following:

(1) Air quality, including air pollution and toxic air contaminants: the federal Clean Air Act (42 U.S.C. Sec. 7401 et seq.) and the federal Acid Precipitation Act of 1980 (42 U.S.C. Sec. 8901 et seq.), and California air quality laws, including Division 26 (commencing with Section 39000) of the Health and

Safety Code, the Protect California Air Act of 2003 (Chapter 4.5 (commencing with Section 42500) of Part 4 of Division 26 of the Health and Safety Code), the Carl Moyer Memorial Air Quality Standards Attainment Program (Chapter 9 (commencing with Section 44275) of Part 5 of Division 26 of the Health and Safety Code), the California Port Community Air Quality Program (Chapter 9.8 (commencing with Section 44299.80) of Part 5 of Division 26 of the Health and Safety Code), the California Clean Schoolbus Program (Chapter 10 (commencing with Section 44299.90) of Part 5 of Division 26 of the Health and Safety Code), the Air Pollution Permit Streamlining Act of 1992 (Article 1.3 (commencing with Section 42320) of Chapter 4 of Part 4 of Division 26 of the Health and Safety Code), and the California air pollution control laws, including the Air Toxics "Hot Spots" Information and Assessment Act of 1987 (Part 6 (commencing with Section 44300) of Division 26 of the Health and Safety Code), the Atmospheric Acidity Protection Act of 1988 (Chapter 6 (commencing with Section 39900) of Part 2 of Division 26 of the Health and Safety Code), the Connelly-Areias-Chandler Rice Straw Burning Reduction Act of 1991 (Section 41865 of the Health and Safety Code), and the Lewis-Presley Air Quality Management Act (Chapter 5.5 (commencing with Section 40400) of Part 3 of Division 26 of the Health and Safety Code).

(2) Biological resources, including protected species and habitat types: the federal Endangered Species Act of 1973 (16 U.S.C. Sec. 1531 et seq.), the federal Migratory Bird Treaty Act (16 U.S.C. Sec. 703 et seq.), the federal Bald and Golden Eagle Protection Act (16 U.S.C. Sec. 668), Section 404(b) of the federal Clean Water Act (33 U.S.C. Sec. 1344(b)), the federal Marine Mammal Protection Act of 1972 (16 U.S.C. Sec. 1361 et seq.), the federal Nonindigenous Aquatic Nuisance Prevention and Control Act of 1990 (16 U.S.C. Sec. 4701 et seq.), the California Endangered Species Act (Chapter 1.5 (commencing with Section 2050) of Division 3 of the Fish and Game Code), Sections 1602, 3503.5, 3511, 3513, and 4700 of the Fish and Game Code, the Oak Woodlands Conservation Act (Article 3.5 (commencing with Section 1360) of Chapter 3 of Division 2 of the Fish and Game Code), Article 3 (commencing with Section 355) of Chapter 3 of Division 1 of the Fish and Game Code, Division 5 (commencing with Section 5000) of the Fish and Game Code, Division 6

(commencing with Section 5500) of the Fish and Game Code, and subdivision (e) of Section 65302 of the Government Code.

(3) Cultural resources, including archaeological resources: Section 106 of the federal National Historic Preservation Act (16 U.S.C. Sec. 470(f)), the federal American Indian Religious Freedom Act (42 U.S.C. Sec. 1996), Section 7050.5 of the Health and Safety Code, and Section 5097.9.

(4) Climate change and greenhouse gas emissions: the federal Clean Air Act (42 U.S.C. Sec. 7401 et seq.), the federal Energy Independence and Security Act of 2007 (42 U.S.C. Sec. 17001 et seq.), the California Global Warming Solutions Act of 2006 (Division 25.5 (commencing with Section 38500) of the Health and Safety Code), Division 26 (commencing with Section 39000) of the Health and Safety Code, the California Alternative and Renewable Fuel, Vehicle Technology, Clean Air, and Carbon Reduction Act of 2007 (Chapter 8.9 (commencing with Section 44270) of Part 5 of Division 26 of the Health and Safety Code), the California Energy-Efficient Vehicle Group Purchase Program (Article 1.5 (commencing with Section 43810) of Chapter 4 of Part 5 of Division 26 of the Health and Safety Code), Section 43018.5 of the Health and Safety Code, and Chapter 728 of the Statutes of 2008.

(5) Hazards and hazardous materials, including toxic chemical exposures, brownfields or contaminated site issues, and chemical accident risks: the federal Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. Sec. 9601 et seq.), the federal Resource Conservation and Recovery Act of 1976 (42 U.S.C. Sec. 6901 et seq.), the federal Emergency Planning and Community Right-to-Know Act of 1986 (42 U.S.C. Sec. 11001 et seq.), the federal Pollution Prevention Act of 1990 (42 U.S.C. Sec. 13101 et seq.), the federal Oil Pollution Act of 1990 (33 U.S.C. Sec. 2701 et seq.), the Federal Insecticide, Fungicide, and Rodenticide Act (7 U.S.C. Sec. 136 et seq.), the federal Toxic Substances Control Act (15 U.S.C. Sec. 2601 et seq.), the federal Asbestos Hazard Emergency Response Act of 1986 (15 U.S.C. Sec. 2641 et seq.), the federal Lead-Based Paint Exposure Reduction Act (15 U.S.C. Sec. 2681 et seq.), the federal Low-Level Radioactive Waste Policy Act (42 U.S.C. Sec. 2121b et seq.), the federal Lead Contamination Control Act of 1988 (42 U.S.C. Sec. 300j-21 et seq.), the Hazardous Waste Control Law

(Chapter 6.5 (commencing with Section 25100) of Division 20 of the Health and Safety Code), Chapter 6.7 (commencing with Section 25280) of Division 20 of the Health and Safety Code, Sections 25356.1.5 and 25395.94 of the Health and Safety Code, Chapter 6.95 (commencing with Section 25500) of Division 20 of the Health and Safety Code, the Elder California Pipeline Safety Act of 1981 (Chapter 5.5 (commencing with Section 51010) of Part 1 of Division 1 of Title 5 of the Government Code), and the Natural Gas Pipeline Safety Act of 2011 (Article 2 (commencing with Section 955) of Chapter 4.5 of Part 1 of Division 1 of the Public Utilities Code).

(6) Hydrology and water quality, including flooding and sea level rise: the federal Water Pollution Control Act (33 U.S.C. Sec. 1251 et seq.), the National Contaminated Sediment Assessment and Management Act (33 U.S.C. Sec. 1271 et seq.), the federal Safe Drinking Water Act (33 U.S.C. Sec. 300f et seq.), Section 1602 of the Fish and Game Code, the Integrated Regional Water Management Planning Act (Part 2.2 (commencing with Section 10530) of Division 6 of the Water Code), the Stormwater Resource Planning Act (Part 2.3 (commencing with Section 10560) of Division 6 of the Water Code), the Porter-Cologne Water Quality Control Act (Division 7 (commencing with Section 13000) of the Water Code), the Safe Drinking Water and Toxic Enforcement Act of 1986 (Chapter 6.6 (commencing with Section 25249.5) of Division 20 of the Health and Safety Code), the Urban Water Management Planning Act (Part 2.6 (commencing with Section 10610) of Division 6 of the Water Code), Part 2.10 (commencing with Section 10910) of Division 6 of the Water Code, the Water Conservation in Landscaping Act (Article 10.8 (commencing with Section 65591) of Chapter 3 of Division 1 of Title 7 of the Government Code), the Storm Water Enforcement Act of 1998 (Chapter 5.9 (commencing with Section 13399.25) of Division 7 of the Water Code), the Water Recycling Law (Chapter 7 (commencing with Section 13500) of Division 7 of the Water Code), Chapter 7.3 (commencing with Section 13560) of Division 7 of the Water Code, and Part 2.75 (commencing with Section 10750) of Division 6 of the Water Code.

(7) Land use planning including consistency with land use plans: the federal Coastal Zone Management Act of 1972 (16 U.S.C. Sec. 1451 et seq.), the Federal Land Policy and Management Act of

1976 (43 U.S.C. Sec. 1701 et seq.), the federal Forest and Rangeland Renewable Resources Planning Act of 1974 (16 U.S.C. Secs. 1600 to 1614, incl., and 1641 to 1649, incl.), the National Forest Management Act of 1976 (16 U.S.C. Secs. 1600 and 1611 to 1614, incl.), the Planning and Zoning Law (Title 7 (commencing with Section 65000) of the Government Code), the Subdivision Map Act (Division 2 (commencing with Section 66410) of Title 7 of the Government Code), the California Coastal Act of 1976 (Division 20 (commencing with Section 30000) of this code), the Cortese-Knox-Hertzberg Local Government Reorganization Act of 2000 (Part 1 (commencing with Section 56000) of Division 3 of Title 5 of the Government Code), the California Green Building Standards Code (Part 11 of Title 24 of the California Code of Regulations), and the California Building Code (Part 2 of Title 24 of the California Code of Regulations).

(8) Public services, including fire and police protection, schools, parks, solid waste, recycling, and other public facilities: Chapter 2 (commencing with Section 17921) of Part 1.5 of Division 13 of the Health and Safety Code, Sections 65996, 65997, and 66477 of the Government Code, Title 7.3 (commencing with Section 66799) of the Government Code, the Used Oil Recycling Act (Article 9 (commencing with Section 3460) of Chapter 1 of Division 3 of this code), the California Beverage Container Recycling and Litter Reduction Act (Division 12.1 (commencing with Section 14500), Division 12.3 (commencing with Section 16000), Division 12.4 (commencing with Section 16050), and Division 12.7 (commencing with Section 18000) of this code), the Fiberglass Recycled Content Act of 1991 (Division 12.9 (commencing with Section 19500) of this code), the California Integrated Waste Management Act of 1989 (Division 30 (commencing with Section 40000) of this code), the California Fire Code (Part 9 of Title 24 of the California Code of Regulations), and Sections 1270 and 6773 of Title 8 of the California Code of Regulations.

(9) Traffic and transportation, including transit, vehicular, bicycle, and pedestrian transportation, emergency access, and roadway safety: the federal Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (23 U.S.C. Sec. 101 et seq.), Titles 23 and 49 of the United States Code, and Chapter 2.3 (commencing with Section 65070), Chapter 2.5 (commencing with Section 65080), and Chapter 2.8 (commencing

with Section 65088) of Division 1 of Title 7 of the Government Code.

(10) Utilities and service systems, including wastewater, water supply, stormwater, landfill and waste management systems: Part 2.10 (commencing with Section 10910) of Division 6 of the Water Code, Part 2.55 (commencing with Section 10608) of Division 6 of the Water Code, the Urban Water Management Planning Act (Part 2.6 (commencing with Section 10610) of Division 6 of the Water Code), and the Water Conservation in Landscaping Act (Article 10.8 (commencing with Section 65591) of Chapter 3 of Division 1 of Title 7 of the Government Code).

(11) Aesthetics: the federal Highway Beautification Act of 1965 (23 U.S.C. Sec. 131), Article 2.5 (commencing with Section 260) of Chapter 1 of Division 1 of the Streets and Highways Code, the Outdoor Advertising Act (Chapter 2 (commencing with Section 5200) of Division 3 of the Business and Professions Code), and subdivision (e) of Section 656302 of the Government Code.

(12) Agriculture: the federal Soil and Water Conservation Act of 1977 (16 U.S.C. Sec. 2001 et seq.) and the Williamson Act (Chapter 7 (commencing with Section 51200) of Part 1 of Division 1 of Title 5 of the Government Code); and forestry resources: the Z'Berg-Nejedly Forest Practice Act of 1973 (Chapter 8 (commencing with Section 4511) of Part 2 of Division 4) and corresponding regulations (Chapter 4 (commencing with Section 895), Chapter 4.5 (commencing with Section 1115), and Chapter 10 (commencing with Section 1600) of Division 1.5 of Title 14 of the California Code of Regulations), Protection of Forest, Range and Forage Lands (Part 2 (commencing with Section 4101) of Division 4), and the Wild and Scenic Rivers Act (Chapter 1.4 (commencing with Section 5093.50) of Division 5).

(13) Mineral resources: the federal Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. Sec. 1201 et seq.) and the Surface Mining and Reclamation Act of 1975 (Chapter 9 (commencing with Section 2710) of Division 2).

(14) Noise: the federal Noise Control Act of 1972 (43 U.S.C. Sec. 4901 et seq.), the federal Aviation Safety and Noise Abatement Act of 1979 (49 U.S.C. Sec. 47501 et seq.), Article 5 (commencing with Section 65300) of Chapter 3 of Division 1 of Title 7 of the Government Code, the California Noise Insulation Standards (Part 2 of Title 24 of the California Code of Regulations),

the California Employee Noise Exposure Limits (Article 105 (commencing with Section 5095) of Group 15 of Subchapter 7 of Chapter 4 of Division 1 of Title 8 of the California Code of Regulations).

(d) Over the same 40-year period since the enactment of CEQA, the Legislature has also adopted environmental protection laws affecting three topical areas for which the United States Congress has not taken any action to adopt federal environmental law of general application in California, as follows:

(1) Geology and soils, including seismic and landslide risk: the Alquist-Priolo Earthquake Fault Zoning Act (Chapter 7.5 (commencing with Section 2621) of Division 2 of this code), the Seismic Hazards Mapping Act (Chapter 7.8 (commencing with Section 2690) of Division 2 of this code), the California Building Code (Title 24 of the California Code of Regulations), Chapter 12.2 (commencing with Section 8875) of Division 1 of Title 2 of the Government Code, subdivision (g) of Section 65302 of the Government Code, and the Surface Mining and Reclamation Act of 1975 (Chapter 9 (commencing with Section 2710) of Division 2 of this code).

(2) Population and housing growth: Article 10.6 (commencing with Section 65580) of Chapter 3 of Division 1 of Title 7 of the Government Code and Chapter 13 (commencing with Section 75120) of Division 43.

(3) Recreational resources: Section 66477 of the Government Code and the Public Park Preservation Act of 1971 (Chapter 2.5 (commencing with Section 5400) of Division 5 of this code).

(e) When enacting CEQA and subsequent amendments, the Legislature declared its intent to ensure that all public agencies give major consideration to preventing environmental damage, while providing a decent home and satisfying living environment for every Californian and to create and maintain conditions under which humankind and nature can exist in productive harmony to fulfill the social and economic requirements of present and future generations.

(f) Environmental laws, including implementing plans, programs, regulations, and permit requirements that have been adopted since the 1970 enactment of CEQA, are designed to ensure California continues as a national and international leader in

protecting the environment, health, safety, and welfare of California and those within its borders.

(1) At the local level, the California Constitution and California law require cities, counties, and cities and counties to adopt land use plans in order to develop and implement an orderly planning process for protecting and enhancing the quality of the community and the environment while providing for jobs, revenues, recreational and other services, housing, and other community needs.

(2) Pursuant to Chapter 728 of the Statutes of 2008, metropolitan planning organizations (MPOs) are directed to prepare sustainable communities strategies (SCSs) to reduce regional greenhouse gas emissions from the land use and transportation sector. Additionally, many cities and counties have adopted, or are in the process of adopting, land use plans such as general plan updates, zoning code revisions, specific plans, community plans, and area plans to encourage both renewable energy production and higher density, transit-oriented development patterns.

(3) In response to the challenges of climate change and in furtherance of energy independence and security, the Legislature has established significant new mandates for the development and use of renewable energy and higher density development patterns that promote transit utilization and conserve water and energy resources.

(4) With recent mandates and policies encouraging denser development patterns to promote transit, energy and water efficiency, job and housing growth is prioritized in areas that are already well populated and include urbanized conditions such as regional freeway congestion and local roadway congestion, and neighborhood-scale challenges such as parking and evolving aesthetic values. By directing growth into higher density, transit-oriented development patterns, SCS and local land use plan and zoning code adoption and implementation generally cause significant unavoidable density-related adverse environmental impacts under CEQA, such as traffic and parking and related air quality emissions. Additionally, infrastructure and services in many urbanized areas are challenged and require upgrades that are beyond the fiscal ability or jurisdictional authority, or both, of a city or county, resulting in findings of additional significant unavoidable impacts for CEQA purposes. Impacts from higher

density development land use plans and zoning code revisions (urbanization impacts) are evaluated and in many instances approved by decisionmakers as an appropriate policy decision based on climate, energy security, agricultural or open-space preservation, or other inherent policy choices that are informed by the EIR's environmental analysis and public disclosure process.

(g) Environmental laws and regulations identify compliance obligations that apply uniformly to similarly situated projects and activities, and provide critical environmental protections that go well beyond the ad hoc review process created by CEQA. Environmental laws and regulations identify compliance obligations of general applicability and thereby provide greater clarity than the project-by-project ad hoc review process that was created for CEQA in 1970.

(h) CEQA requires a public and environmental review process for the review and adoption of land use plans and zoning code revisions, including requirements to avoid or minimize the significant environmental impacts of land use plan and zoning code implementation. For plan or zoning code changes for which an environmental impact report (EIR) was prepared and certified, CEQA mandates inclusion of mitigation measures and alternatives to avoid or minimize significant unavoidable impacts.

(i) The court, in Friends of Westwood v. City of Los Angeles (1987) 191 Cal.App.3d 259, determined that the CEQA process is required even for projects that complied with the density, use type, and intensity restrictions in applicable land use plans and the zoning code.

(j) Applying CEQA's existing requirements at a project-specific level can often undermine the policy goals and objectives of applicable land use plans. A project that brings higher density to an area, with corresponding jobs, revenues, or housing, also brings traffic and parking demands, with associated air quality and other impacts, as well as a host of other urbanized effects as disclosed in the land use plan EIR. Where urbanized effects have been mitigated on the plan level to the extent feasible, the reanalysis of these impacts at the project level can be problematic.

(k) Duplicative CEQA review of projects that comply with the density, use type, and intensity requirements of land use plans that have already undergone an EIR process was not intended by the Legislature and creates unacceptable delays and uncertainties in

the plan implementation process. Avoidance of duplicative review will reduce litigation and the considerable political uncertainty that has resulted for communities and project proponents who attempt to implement land use plans, notwithstanding previously disclosed significant unavoidable urbanized impacts.

(*l*) Development of projects consistent with the density, use type, and intensity requirements of land use plans should be encouraged by avoiding duplicative environmental review of those projects if project approval is conditioned on implementing applicable mitigation measures included in the EIR prepared for the applicable land use plans.

(m) Public agencies are subject to public notice and disclosure requirements when approving projects, including the Ralph M. Brown Act (Chapter 9 (commencing with Section 54950) of Part 1 of Division 2 of Title 5 of the Government Code) and the Bagley-Keene Open Meeting Act (Article 9 (commencing with Section 11120) of Chapter 1 of Part 1 of Division 3 of Title 2 of the Government Code), and are also authorized to require comprehensive project applications and to condition project approvals under their police powers and other laws, not including CEQA.

(n) Public agencies are encouraged to create and maintain electronic records where feasible to reduce paperwork and increase efficiency. The prompt commencement and resolution of litigation filed under this division and CEQA is dependent upon the prompt availability of the respondent public agency's record of proceedings for the challenged agency action. There are no practical means by which records of proceedings which are predominantly maintained in electronic format can be readily accessed, organized, and produced by any party other than the respondent public agency. Where all or most of the respondent agency's record of proceeding is maintained by the respondent agency or its designee in an electronic format, timely production of the record of proceedings requires that the record be prepared by the respondent agency.

(o) In enacting this division, it is the intent of the Legislature to further the purposes of CEQA by integrating environmental and planning laws and regulations adopted over the last 40 years, while avoiding the sometimes conflicting and often duplicative ad hoc environmental review and mitigation requirements under CEQA.

(p) In enacting this division, it is also the intent of the Legislature to continue to foster public disclosure and informed public participation of the environmental consequences of projects.

(q) In enacting this division, it is the intent of the Legislature to preserve the authority of a lead agency, consistent with the jurisdiction and authority of that agency, to disapprove projects or to condition approvals of projects on terms that may require more stringent environmental protections or project approval conditions than those required by applicable environmental or planning laws.

21201. For the purposes of this division, the following definitions shall apply:

(a) "Applicable environmental law" is a law related to an environmental topical area listed in subdivision (b) of Section 21200.5 that is relevant to a project and that does any of the following:

(1) Includes a policy determination, or directs or authorizes the adoption by an implementing agency of regulations, plans, or permits, licenses, or authorization applications and approval processing procedure and practices to implement that policy determination, regarding a standard applicable to a topical area requiring analysis and mitigation under CEQA.

(2) Identifies quantitative and qualitative analytical methods or approaches, or directs or authorizes the adoption by an implementing agency of regulations, plans, or permits, licenses, or authorization applications and approval processing procedures and practices that include those analytical methods or approaches, regarding a standard.

(3) Identifies required or permissible practices for mitigating or minimizing adverse impacts to a topical area requiring analysis and mitigation under CEQA, or directs or authorizes the adoption by an implementing agency of regulations or plans, or directs or authorizes an implementing agency to review and approve permits, licenses, or authorization applications that include avoidance, minimization, mitigation, conditions or other requirements to achieve a standard applicable to a topical area requiring analysis and mitigation under CEQA.

(b) "Applicable plan" means a planning document for which an environmental impact report, supplemental environmental

impact report, or environmental impact report addendum was certified, including either of the following:

(1) A land use plan, such as a general plan, specific plan, or sustainable communities strategies adopted by a city, county, city and county, metropolitan planning organization, or other local, regional, or state agency that establishes use designations, densities, and building intensities.

(2) A plan to improve or maintain public facilities or infrastructure to be funded in whole or in part by public funds and which has been adopted by a local, regional, or state agency.

(c) "Applicable mitigation requirements" means all mitigation measures included in an applicable plan with the exception of mitigation measures the lead agency determines, based on substantial evidence, are not required to mitigate a potentially significant impact of a proposed project.

(d) "CEQA" means the California Environmental Quality Act (Division 13 (commencing with Section 21000)).

(e) "Implementing agency" means any state or federal agency, board, or commission, any county, city and county, city, regional agency, public district, or other political subdivision.

(f) "Standard" means a quantitative or qualitative level of protection, preservation, enhancement, pollution, reduction, avoidance, or other measure for a topical area requiring analysis and mitigation under CEQA.

21202. (a) An environmental document prepared pursuant to CEQA shall disclose all applicable environmental laws.

(1) An environmental document prepared under CEQA and that discloses an applicable environmental law described in paragraph (1) of subdivision (a) of Section 21201 shall disclose the applicable compliance requirements of that law, and compliance with the applicable standards for impacts that occur or might occur as a result of approval of the project shall be the exclusive means of evaluating and mitigating environmental impacts under CEQA regarding the subject of that law, notwithstanding any other provision of law.

(2) An environmental document prepared under CEQA and that discloses an applicable environmental law described in paragraph (2) of subdivision (a) of Section 21201 shall disclose the applicable analytical methods or approaches, and the disclosure of those analytical methods or approaches shall be the exclusive means of

evaluating potential project impacts under CEQA regarding the relevant law, notwithstanding any other provision of law.

(3) An environmental document prepared under CEQA and that discloses an applicable environmental law described in paragraph (3) of subdivision (a) of Section 21201 shall disclose the applicable mitigation and minimization methods or approaches typically used by implementing agencies as part of their review and approval or permits, licenses, or authorization applications, and compliance with mitigation and minimization practices shall be the exclusive means of mitigating environmental impacts under CEQA regarding the subject of the relevant law, notwithstanding any other provision of law.

(b) The disclosure obligations set forth in this section are intended to foster informed environmental review and public participation in the environmental and public review process required by CEQA or other applicable laws and regulations, such as the Ralph M. Brown Act (Chapter 9 (commencing with Section 54950) of Part 1 of Division 2 of Title 5 of the Government Code) and the Bagley-Keene Open Meeting Act (Article 9 (commencing with Section 11120) of Chapter 1 of Part 1 of Division 3 of Title 2 of the Government Code).

21203. (a) A cause of action shall not be commenced under Section 21167 for noncompliance with CEQA under either of the following circumstances:

(1) If the cause of action relates to an environmental topical area listed in subdivision (b) of Section 21200.5 and the environmental document discloses compliance with any applicable environmental law pertaining to a topical area or any regulation, plan, permit, license, or authorization application and approval processing procedures adopted by an implementing agency as directed or authorized by that applicable environmental law.

(2) If the environmental document for the project discloses compliance with applicable environmental law pertaining to a topical area or any regulation, plan, permit, license, or authorization application and approval processing procedures adopted by an implementing agency as directed or authorized by that applicable environmental law; the project conforms to the use designation, density, or building intensity in a land use plan or was included in any other applicable plan identified in subdivision (b) of Section 21201; and the lead agency incorporates applicable mitigation

requirements included in the certified environmental impact report, supplemental environmental impact report, or environmental impact report addendum prepared for the applicable plan into the environmental document prepared for the project.

(b) This section does not prohibit a cause of action otherwise authorized by law to enforce compliance with any other existing local, state, and federal law, regulation, or applicable plan.

21204. (a) Except for projects with potentially significant aesthetic impacts on an official state scenic highway established pursuant to section 262 of the Streets and Highways Code, a lead agency shall not be required to evaluate aesthetics pursuant to CEQA or this division, and the lead agency shall not be required to make findings pursuant to subdivision (a) of Section 21081 on or relating to aesthetic impacts.

(b) This section does not change the authority of a lead agency to consider aesthetic issues and to require mitigation or avoidance of adverse aesthetic impacts pursuant to discretionary powers provided by laws other than CEQA or this division.

21204.5. This division does not modify the obligation of a lead agency to evaluate the potential for a project to effect Native American resources and to comply with Section 5097.98, including the obligation to discuss and confer with the appropriate Native Americans, as identified by the Native American Heritage Commission and the obligation to avoid, mitigate, and minimize adverse impacts to significant Native American resources.

21205. This division applies only to projects for which the lead agency or applicant has agreed to provide to the public in a readily accessible electronic format an annual compliance report prepared pursuant to the mitigation monitoring and reporting program required by paragraph (1) of subdivision (a) of Section 21081.6.

21206. This division does not preclude any state agency, board, or commission, or any city, county, city and county, regional agency, public district, redevelopment agency, or other political subdivision from requiring information or analysis of the project under consideration, or imposing conditions of approval for that project, under laws and regulations other than this division and CEQA.

21207. (a) An environmental document, prepared pursuant to CEQA, shall be required to consider only those environmental topical areas listed in subdivision (b) of Section 21200.5 and only

to the extent those environmental topical areas are relevant to the project.

(b) Subdivision (b) of Section 21200.5 is not intended to affirm, reject, or otherwise affect court decisions concerning the consistency of the guidelines provisions within the provisions of CEQA.

(c) This section does not preclude a lead agency from modifying or updating its analytical methodologies for those topical areas.

SEC. 2. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because a local agency or school district has the authority to levy service charges, fees, or assessments sufficient to pay for the program or level of service mandated by this act, within the meaning of Section 17556 of the Government Code.

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# ATTACHMENT 3I

## AB 466 (Quirk-Silva)
## Federal Transportation Funds

**Summary:**
Establishes a state formula based on population and ozone nonattainment for allocating federal Congestion Mitigation and Air Quality Improvement (CMAQ) Program funds to regional transportation agencies.

**Background:**
The CMAQ Program is a valuable program that provides funds for transportation or transportation-related projects that either reduce traffic congestion, improve air quality, or do both. The CMAQ program is the only federal funding source dedicated to addressing the air quality impacts of the transportation sector. CMAQ funds are provided to nonattainment and maintenance areas for projects that are "likely to contribute to the attainment of a national ambient air quality standard" and "have a high level of effectiveness in reducing air pollution."

Under the previous federal surface transportation authorizing law, known as SAFETEA-LU, a very complicated funding formula was established to allocate CMAQ funds to the states. The formula established a ratio that weighted the population of each federally-designated regional transportation planning agencies' ozone and carbon monoxide nonattainment and maintenance areas compared to the total of all weighted ozone and carbon monoxide nonattainment and maintenance area populations in the state. The result would then be multiplied by a factor based on the severity of the ozone nonattainment area, from 1.0 for marginal ozone nonattainment, to a factor of 1.4 for extreme ozone nonattainment.

This formula was eliminated under the recent enactment of the current surface transportation law, MAP-21. The current federal formula attempts to assure each state with an equivalent percentage of CMAQ funds as it received in FY 2009, compared to its total FY 2009 apportionment of surface transportation funds. There is no longer any language in federal law which specifies how states are to divide up and distribute their CMAQ funds with one exception. That exception is a new requirement that states and metropolitan planning organizations (MPOs) give priority in distributing CMAQ funds to PM2.5 nonattainment areas for projects that are proven to reduce PM2.5, including diesel retrofits.

**Status:**
Set for hearing, April 15 – Assembly Transportation Committee.

**Specific Provisions**:

- CMAQ funds shall be apportioned by Caltrans to MPOs and transportation planning agencies responsible for air quality conformity determinations in federally designated air quality nonattainment and maintenance areas within the state as follows:

- In the ratio that the weighted nonattainment and maintenance population in each federally designated area within the state bears to the total of all weighted nonattainment and maintenance area populations in the state.

- The weighted nonattainment and maintenance area population shall be calculated by multiplying the population of each area in the state that is a nonattainment area or maintenance area for ozone or carbon monoxide by the following factors:
  - A factor of 1.0, if, at the time of apportionment, the area is a maintenance area.
  - A factor of 1.0, if, at the time of the apportionment, the area is classified as a marginal ozone nonattainment area
  - A factor of 1.1, if, at the time of the apportionment, the area is classified as a moderate ozone nonattainment area
  - A factor of 1.2, if, at the time of the apportionment, the area is classified as a serious ozone nonattainment area
  - A factor of 1.3, if, at the time of the apportionment, the area is classified as a severe ozone nonattainment area
  - A factor of 1.4, if, at the time of the apportionment, the area is classified as an extreme ozone nonattainment area
  - A factor of 1.0, if, at the time of the apportionment, the area is not a nonattainment or maintenance area for ozone, but is classified as a nonattainment area for carbon monoxide.
- In addition to being designated as a nonattainment or maintenance area for ozone, if a county within the area is also classified as a nonattainment or maintenance area for carbon monoxide, the weighted nonattainment or maintenance area population of the county, shall be further multiplied by a factor of 1.2.

**Impacts on SCAQMD's mission, operations or initiatives:**
This bill establishes a CMAQ distribution formula from the no-longer-applicable SAFETEA-LU law and seeks to codify it in state statute. Under SAFETEA-LU, Southern California, and the SCAQMD region in particular benefitted from larger CMAQ allocations due to the basin's population and extreme ozone nonattainment level. However, this weighting formula is:

- Complex – Since it involves populations of air districts, which do not necessarily overlap with each region's MPOs, and some MPOs contain several nonattainment areas of varying severity, it is difficult to calculate how much each region would receive.

- Out of Date – This formula still refers to carbon monoxide nonattainment areas, but there are no CO nonattainment areas in CA or the nation.

- Incomplete – Transportation sources are a significant cause of PM, but this formula does not utilize a region's nonattainment status for particulate matter. If ozone is to be considered, PM should be as well.

**Recommended Position:**
Work with the author and our regional transportation partners to seek a distribution formula which is fair and equitable for our region.

# ATTACHMENT 3J

AMENDED IN ASSEMBLY MARCH 14, 2013

CALIFORNIA LEGISLATURE—2013–14 REGULAR SESSION

## ASSEMBLY BILL No. 466

**Introduced by Assembly Member Quirk-Silva**

February 19, 2013

An act to amend Section ~~99214~~ *182.7* of the ~~Public Utilities~~ *Streets and Highways* Code, relating to ~~public transit~~ *transportation*.

LEGISLATIVE COUNSEL'S DIGEST

AB 466, as amended, Quirk-Silva. ~~Public transportation: local transportation fund.~~ *Federal transportation funds.*

*Existing law provides for the allocation of certain federal transportation funds apportioned to the state between state purposes administered by the Department of Transportation and local and regional purposes administered by various regional agencies, including funds made available under the federal Congestion Mitigation and Air Quality Improvement Program, as specified.*

*This bill would require the department to allocate federal funds to regional agencies under the federal Congestion Mitigation and Air Quality Improvement Program based on a weighted formula that considers population and pollution in a given area, as specified.*

~~Existing law provides for the allocation by the designated transportation planning agency of funds in a county's local transportation fund derived from ¼% of the sales tax to transit operators for public transportation purposes and, in certain cases, to cities and counties for street and road purposes. Existing law defines "transportation planning agency" for these purposes.~~

~~This bill would make a nonsubstantive change to this definitional provision.~~

Vote: majority. Appropriation: no. Fiscal committee: ~~no~~ *yes*. State-mandated local program: no.

*The people of the State of California do enact as follows:*

*SECTION 1. Section 182.7 of the Streets and Highways Code is amended to read:*

182.7. (a) Notwithstanding Sections 182 and 182.5, Sections 188, 188.8, and 825 do not apply to the expenditure of an amount of federal funds equal to the amount of federal funds apportioned to the state pursuant to ~~subsection (b)(2) of~~ Section ~~104~~ *104(b)(4)* of Title 23 of the United States Code. These funds shall be known as the congestion mitigation and air quality program funds and shall be expended in accordance with Section 149 of Title 23 of the United States Code. The department, the transportation planning agencies, and the metropolitan planning organizations may do all things necessary in their jurisdictions to secure and expend those federal funds in accordance with the intent of federal law and this chapter.

(b) The congestion mitigation and air quality program funds~~, including any funds to which subsection (c) of Section 110 of Title 23 of the United States Code, as added by subdivision (a) of Section 1310 of Public Law 105-178, applies,~~ shall be apportioned by the department to the metropolitan planning organizations designated pursuant to Section 134 of Title 23 of the United States Code and, in areas where none has been designated, to the transportation planning agency established by Section 29532 *or 29532.1* of the Government Code. ~~The~~ *All* funds *apportioned to the state pursuant to Section 104(b)(4) of Title 23 of the United States Code* shall be apportioned to metropolitan planning organizations and transportation planning agencies responsible for air quality conformity determinations in federally designated air quality nonattainment and maintenance areas within the state ~~in the manner and in accordance with the formula set forth in subsection (b)(2) of Section 104 of Title 23 of the United States Code. Funds apportioned~~ *as follows:*

*(1) The department shall apportion these funds in the ratio that the weighted nonattainment and maintenance population in each federally designated area within the state bears to the total of all*

*weighted nonattainment and maintenance area populations in the state.*

*(2) Subject to paragraph (3), the weighted nonattainment and maintenance area population shall be calculated by multiplying the population of each area in the state that is a nonattainment area or maintenance area as described in Section 149(b) of Title 23 of the United States Code for ozone or carbon monoxide by the following factors:*

*(A) A factor of 1.0, if, at the time of apportionment, the area is a maintenance area.*

*(B) A factor of 1.0, if, at the time of the apportionment, the area is classified as a marginal ozone nonattainment area under Subpart 2 of Part D of Title I of the Clean Air Act (42 U.S.C. Sec. 7511 et seq.).*

*(C) A factor of 1.1, if, at the time of the apportionment, the area is classified as a moderate ozone nonattainment area under Subpart 2 of Part D of Title I of the Clean Air Act (42 U.S.C. Sec. 7511 et seq.).*

*(D) A factor of 1.2, if, at the time of the apportionment, the area is classified as a serious ozone nonattainment area under Subpart 2 of Part D of Title I of the Clean Air Act (42 U.S.C. Sec. 7511 et seq.).*

*(E) A factor of 1.3, if, at the time of the apportionment, the area is classified as a severe ozone nonattainment area under Subpart 2 of Part D of Title I of the Clean Air Act (42 U.S.C. Sec. 7511 et seq.).*

*(F) A factor of 1.4, if, at the time of the apportionment, the area is classified as an extreme ozone nonattainment area under Subpart 2 of Part D of Title I of the Clean Air Act (42 U.S.C. Sec. 7511 et seq.).*

*(G) A factor of 1.0, if, at the time of the apportionment, the area is not a nonattainment or maintenance area for ozone, but is classified under Subpart 3 of Part D of Title I of the Clean Air Act (42 U.S.C. Sec. 7512 et seq.) as a nonattainment area for carbon monoxide.*

*(H) A factor of 1.0, if, at the time of apportionment, an area is designated as a nonattainment area for ozone under Subpart 1 of Part D of Title I of the Clean Air Act (42 U.S.C. Sec. 7512 et seq.).*

*(3) If, in addition to being designated as a nonattainment or maintenance area for ozone as described in paragraph (2), any*

*county within the area is also classified under Subpart 3 of Part D of Title I of the Clean Air Act (42 U.S.C. Sec. 7512 et seq.) as a nonattainment or maintenance area described in paragraph (2) for carbon monoxide, the weighted nonattainment or maintenance area population of the county, as determined under subparagraphs (A) to (F), inclusive, or subparagraph (H) of paragraph (2), shall be further multiplied by a factor of 1.2.*

*(4) Funds allocated* under this subdivision shall remain available for three federal fiscal years, including the federal fiscal year apportioned. ~~Notwithstanding the foregoing, the formula for distributing apportionments made to metropolitan planning organizations and transportation planning agencies eligible for funding according to subsection (b)(2) of Section 104 of Title 23 of the United States Code shall, for the 2007 and 2008 federal fiscal years, provide apportionments for the Monterey Bay and Santa Barbara regions such that each shall receive 50 percent of its 2005 apportionment in federal fiscal year 2007 and 25 percent of its 2005 apportionment in federal fiscal year 2008.~~

(c) Notwithstanding subdivision (b), where county transportation commissions have been created by Division 12 (commencing with Section 130000) of the Public Utilities Code, all congestion mitigation and air quality program funds shall be further apportioned by the metropolitan planning organization to the county transportation commission on the basis of relative population within the federally designated air quality nonattainment and maintenance areas after first apportioning to the nonattainment and maintenance areas in the manner and in accordance with the formula set forth in ~~subsection (b)(2) of Section 104 of Title 23 of the United States Code~~ *subdivision (b)*.

In the Monterey Bay region, all congestion mitigation and air quality improvement program funds shall be further apportioned, on the basis of relative population, by the metropolitan planning organization to the regional transportation planning agencies designated under subdivision (b) of Section 29532 of the Government Code.

(d) The department shall notify each metropolitan planning organization, transportation planning agency, and county transportation commission receiving an apportionment under this section, as soon as possible each year, of the amount of obligational authority estimated to be available for expenditure from the federal

apportionment. The metropolitan planning organizations, transportation planning agencies, and county transportation commissions, in cooperation with the department, congestion management agencies, cities and counties, and affected transit operators, shall select and program projects in conformance with federal law. Each metropolitan planning organization and transportation planning agency shall, not later than August 1 of each even-numbered year beginning in 1994, submit its transportation improvement program prepared pursuant to Section 134 of Title 23 of the United States Code to the department for incorporation into the state transportation improvement program.

(e) Not later than July 1 of each year, the metropolitan planning organizations and the regional transportation planning agencies receiving obligational authority under this section, shall notify the department of the projected amount of obligational authority that each entity intends to use during the remainder of the current federal fiscal year, including, but not limited to, a list of projects that will use the obligational authority. Any federal obligational authority that will not be used shall be redistributed by the department to other projects in a manner that ensures that the state will continue to compete for and receive increased obligational authority during the federal redistribution of obligational authority. If the department does not have sufficient federal apportionments to fully use excess obligational authority, the metropolitan planning organization or transportation planning agency relinquishing obligational authority shall make sufficient ~~apportionments~~ *funding* available to the department to fund alternate projects, when practical, within the geographical areas relinquishing the obligational authority. Notwithstanding this subdivision, the department shall comply with subsection (f) of Section 133 of Title 23 of the United States Code.

(f) The department shall be responsible for closely monitoring the use of federal transportation funds, including congestion management and air quality funds to assure full and timely use. The department shall prepare a quarterly report for submission to the commission regarding the progress in use of all federal transportation funds. The department shall notify the commission and the appropriate implementation agency whenever there is a failure to use federal funds within the three-year apportionment period established under *paragraph (4) of* subdivision (b).

(g) The department shall provide written notice to implementing agencies when there is one year remaining within the three-year apportionment period established under *paragraph (4) of* subdivision (b).

(h) Within six months of the date of notification required under subdivision (g), the implementing agency shall provide to the department a plan to obligate funds that includes, but need not be limited to, a list of projects and milestones.

(i) If the implementing agency has not met the milestones established in the implementation plan required under subdivision (h), prior to the end of the three-year apportionment period established under *paragraph (4) of* subdivision (b), the commission shall redirect those funds for use on other transportation projects in the state.

(j) Congestion mitigation and air quality program funds available under this section exchanged pursuant to Section 182.8 may be loaned to and expended by the department. The department shall repay from the State Highway Account to the Traffic Congestion Relief Fund all funds received as federal reimbursements for funds exchanged under Section 182.8 as they are received from the Federal Highway Administration, except that those repayments are not required to be made more frequently than on a quarterly basis.

(k) Prior to determining the amount for local subvention required by this section, the department shall first deduct the amount authorized by the Legislature for increased department oversight of the federal subvented program.

~~SECTION 1. Section 99214 of the Public Utilities Code is amended to read:~~

~~99214. (a) "Transportation planning agency" means the entity designated in Section 29532 or 29532.1 of the Government Code.~~

~~(b) "Transportation planning agency" also includes, for purposes of this chapter, the county transportation commissions created in the Counties of Los Angeles, Orange, Riverside, San Bernardino, and Ventura pursuant to Division 12 (commencing with Section 130000).~~

~~(c) "Transportation planning agency" also includes, for purposes of this chapter, the Imperial County Transportation Commission in Imperial County.~~

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# ATTACHMENT 3K

## AB 1077 (Muratsuchi)
## Sales and use taxes: vehicle license fee: exclusion: alternative fuel motor vehicles.

**Summary:** This bill would reduce the upfront costs of purchasing alternative-fuel vehicles by better aligning the state portion of the sales tax and the vehicle license fee charged at purchase with that of conventionally-fueled vehicles. This bill would sunset in 2022.

**Background:** The existing California vehicle license fee and state and local sales and use taxes on the sale or lease of alternative-fuel vehicles are higher than for comparable conventional-fuel vehicles because alternative-fuel vehicles currently cost more. The higher cost is largely due to the fact that these vehicles are currently produced in lower volumes using newer and/or advanced technologies; therefore their production has not yet achieved the economies of scale relative to conventional vehicles. As alternative-fuel vehicle production increases, the costs associated with these vehicles will likely decline.

The author argues that the current vehicle license fee mechanism and sales and use tax system unfairly penalize the same alternative-fuel vehicles that the state currently encourages through a number of monetary and non-monetary incentive programs.

The author claims that alternative-fuel vehicles provide benefits to all Californians, including:

- Diversification of the transportation fuels sector creating jobs and benefitting the economy;
- Providing more transportation choices for consumers and businesses, thus reducing economic vulnerability to fuel price volatility;
- Reducing air pollutant, greenhouse gas and toxic emissions from mobile sources; and
- Saving Californians $7-$8 billion in avoided health, climate change and societal damages associated with conventional vehicles.

The author asserts that this bill is consistent with Governor Brown's Zero Emission Vehicle (ZEV) Action Plan which identified the need for equitable vehicle license fees and sales taxes for ZEVs and supported continued federal and state incentives to reduce up-front purchase costs.

**Status**: 3/21/13 – Referred to Assem. Com. on REV. & TAX.

**Specific Provisions:** Specifically, this bill would:

Provide that when a consumer purchases an alternative fuel vehicle, the vehicle license fee and the state portion of the sales tax will be calculated on the purchase price of the vehicle after deducting the:

- Received Federal tax credit and State incentive for alternative fuel vehicles, such as a rebate from the Clean Vehicle Project Rebate; incentive from the Heavy-Duty Vehicle Incentive Program; and/or the Carl Moyer Program.

**Impacts on SCAQMD's Mission, Operations or Initiatives**: This bill seeks to enhance incentives that will reduce the upfront cost of clean, alternative fuel vehicles, thus encouraging the early and more widespread adoption of zero and partial zero emission vehicles throughout the state, including the South Coast region. This bill is in line with SCAQMD's policy priorities and would have direct benefits to South Coast residents through the reduction of criteria pollutant, toxic, and greenhouse gas emissions, which would help protect public health. This bill could also help the effort to reach attainment of federal air quality standards within the South Coast by federal timelines.

**Recommended Position: SUPPORT**

# ATTACHMENT 3L

AMENDED IN ASSEMBLY APRIL 2, 2013

CALIFORNIA LEGISLATURE—2013–14 REGULAR SESSION

**ASSEMBLY BILL** **No. 1077**

**Introduced by Assembly Member Muratsuchi**
***(Coauthors: Assembly Members Stone and Williams)***

February 22, 2013

An act to add and repeal Sections 6011.3, 6012.4, and 10759.5 of the Revenue and Taxation Code, relating to taxation, to take effect immediately, tax levy.

LEGISLATIVE COUNSEL'S DIGEST

AB 1077, as amended, Muratsuchi. Sales and use taxes: vehicle license fee: exclusion: alternative fuel motor vehicles.

Existing laws impose state sales and use taxes on retailers measured by the gross receipts from the sale of tangible personal property sold at retail in this state, or on the storage, use, or other consumption in this state of tangible personal property purchased from a retailer for storage, use, or other consumption in this state, *measured by the sales price*. The Sales and Use Tax Law defines the terms "gross receipts" and "sales price."

This bill would, on and after January 1, 2014, and before January 1, 2022, exclude from the terms "gross receipts" and "sales price," ~~the amount of the incremental cost, as defined, included in the sales price~~ *in the sale* of a new alternative fuel motor vehicle, *any amount allowed as a credit under a specified provision of the Internal Revenue Code, relating to new qualified plug-in electric drive motor vehicles, and any amounts received, awarded, or allowed pursuant to a state incentive program for the purchase or lease of an alternative fuel vehicle.*

The Bradley-Burns Uniform Local Sales and Use Tax Law authorizes counties and cities to impose local sales and use taxes in conformity with the Sales and Use Tax Law, and existing law authorizes districts, as specified, to impose transactions and use taxes in accordance with the Transactions and Use Tax Law, which conforms to the Sales and Use Tax Law. Exemptions from state sales and use taxes are incorporated into these laws.

This bill would specify that this exclusion does not apply to local sales and use taxes and transactions and use taxes.

The Vehicle License Fee Law provides that the annual amount of the license fee for any vehicle is 0.65% of the market value of the vehicle, as specified. That law provides for the determination of the market value of any vehicle, for reclassification to increase the market value of a vehicle, and for the exemption of certain vehicles from the imposition of the license fee.

This bill would, on and after January 1, 2014, and before January 1, 2022, for purposes of determining the vehicle license fee, ~~exempts~~ *exempt* from the determination of market value ~~the incremental costs, as defined, that are incurred in the purchase~~ of a new motor vehicle propelled by alternative ~~fuel~~ *fuels any amount allowed as a credit under a specified provision of the Internal Revenue Code, relating to new qualified plug-in electric drive motor vehicles, and any amounts received, awarded, or allowed pursuant to a state incentive program for the purchase or lease of an alternative fuel vehicle*.

This bill would take effect immediately as a tax levy.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: no.

*The people of the State of California do enact as follows:*

SECTION 1. Legislature finds and declares:

(a) There is a wide disparity in fees levied on owners of light-, medium-, and heavy-duty vehicles operated on alternative fuels when compared to those same taxes and fees levied on owners of comparable gasoline and diesel fuel vehicles.

(b) In some cases, the fees on alternative fuel vehicles are more than twice as much as those for conventional fuel vehicles.

(c) The disparity in fees exists even though the alternative fuel vehicle may look identical to the conventional fuel vehicle and provide the same or lesser utility to the individual owner.

(d) The existing California vehicle license fee on motor vehicles that operate on alternative fuels is higher than for comparable conventional fuel vehicles because alternative fuel vehicles generally have higher sales prices. The higher sales prices are largely due to the fact that these vehicles are produced in extremely low volumes (many assembled by hand), such that their production has not achieved the economies of scale that would significantly reduce their cost; and they use many new advanced materials and technologies that also have not yet achieved economies of scale, and therefore have a temporarily greater cost to consumers.

(e) The higher sales prices for these alternative fuel vehicles are expected to be a short-term, temporary situation because prices are expected to decline significantly to competitive levels as volume increases. If this does not occur, these vehicles may never be competitive, and automakers would likely withdraw them from the market. The current vehicle license fee does not reflect these temporary, short-term pricing situations. Instead it intrinsically, but incorrectly, assumes that these short-term higher prices reflect true long-term market value of the vehicles.

(f) Alternative fuel vehicles provide benefits to California citizens that are external to, or not reflected in, their cost to the purchaser. These benefits include: increasing our national independence from foreign energy sources; providing more transportation choices for consumers and businesses, thus reducing our economic vulnerability to sudden fuel price increases caused by external or internal events; reducing air pollutants, climate change pollutants, and toxic emissions from mobile sources; *and* reducing future pressures for additional environmental controls on existing and new businesses and industries in California~~; and creating new advanced transportation technology jobs and industries in California~~.

(g) It is the public policy of the State of California, the federal government, and many local governments, to encourage the development and use of alternative fuel vehicles, for the purpose of providing the benefits described above to all California citizens.

(h) Existing vehicle license fee calculations, as they relate to the determination of market value of alternative fuel vehicles, do not reflect the critical short-term pricing issues described above, nor the external benefits that accrue to all California citizens. Additionally, these existing fees act as a significant disincentive

to potential purchasers of alternative fuel vehicles, and as such, are contrary to existing public policies at all levels of government.

(i) It is the intent of the Legislature to equalize the vehicle license fee between alternative fuel vehicles and conventional fuel vehicles for a period of eight years, beginning January 1, 2014, and ending December 31, 2021. ~~During this time period it is the intent of the Legislature that the incremental or differential cost between an alternative fuel vehicle and a comparable conventional fuel vehicle, as determined by the State Energy Resources Conservation and Development Commission, should be exempt from the vehicle license fee.~~

SEC. 2. Section 6011.3 is added to the Revenue and Taxation Code, to read:

6011.3. (a) Notwithstanding Section 6011 or any other law, on and after January 1, 2014, and before January 1, 2022, "sales price" from the ~~sale~~ *purchase* of a new alternative fuel motor vehicle shall not include ~~the amount of the incremental cost~~ *any amount allowed as a credit under Section 30D of the Internal Revenue Code, relating to new qualified plug-in electric drive motor vehicles, and any amounts received, awarded, or allowed pursuant to a state incentive program for the purchase or lease of an alternative fuel vehicle, including, but not limited to, state income tax credits, the Clean Vehicle Rebate Project, the California Hybrid and Zero-Emission Truck and Bus Voucher Incentive Project, and the On-Road Heavy-Duty Voucher Incentive Program under the Carl Moyer Program.*

(b) For purposes of this section, all of the following shall apply:

(1) "Alternative fuel vehicle" means a motor vehicle subject to registration under the Vehicle Code that operates some or all of the time on a fuel other than gasoline or diesel.

~~(2) "Incremental cost" means the amount equal to the reasonable difference between the cost of the new alternative fuel motor vehicle and the cost of a comparable gasoline or diesel fuel vehicle. This amount shall constitute the maximum incremental cost for purposes of the exclusion in subdivision (a), and shall be reduced, as appropriate, in accordance with the actual sales price of the vehicle.~~

~~(3)~~

*(2)* "Motor vehicle" means "motor vehicle" as defined by Section 415 of the Vehicle Code.

(c) The ~~actual incremental~~ cost *of the vehicle after deducting the amounts described in subdivision (a)* shall be stated in the contract for sale or lease with the purchaser, and shall be reported to the board quarterly.

(d) Notwithstanding any provision of the Bradley-Burns Uniform Local Sales and Use Tax Law (Part 1.5 (commencing with Section 7200)) or the Transactions and Use Tax Law (Part 1.6 (commencing with Section 7251)), the exclusion established by this section shall not apply with respect to any tax levied by a county, city, or district pursuant to, or in accordance with, either of those laws.

(e) This section shall be repealed on January 1, 2022.

SEC. 3. Section 6012.4 is added to the Revenue and Taxation Code, to read:

6012.4. (a) Notwithstanding Section 6012 or any other law, on and after January 1, 2014, and before January 1, 2022, "gross receipts" from the sale of a new alternative fuel motor vehicle shall not include ~~the amount of the incremental cost~~ *any amount allowed as a credit under Section 30D of the Internal Revenue Code, relating to new qualified plug-in electric drive motor vehicles, and any amounts received, awarded, or allowed pursuant to a state incentive program for the purchase or lease of an alternative fuel vehicle, including, but not limited to, state income tax credits, the Clean Vehicle Rebate Project, the California Hybrid and Zero-Emission Truck and Bus Voucher Incentive Project, and the On-Road Heavy-Duty Voucher Incentive Program under the Carl Moyer Program*.

(b) For purposes of this section, all of the following shall apply:

(1) "Alternative fuel vehicle" means a motor vehicle subject to registration under the Vehicle Code that operates some or all of the time on a fuel other than gasoline or diesel.

~~(2) "Incremental cost" means the amount equal to as the reasonable difference between the cost of the new alternative fuel motor vehicle and the cost of a comparable gasoline or diesel fuel vehicle. This amount shall constitute the maximum incremental cost for purposes of the exclusion in subdivision (a), and shall be reduced, as appropriate, in accordance with the actual sales price of the vehicle.~~

~~(3)~~

*(2)* "Motor vehicle" means "motor vehicle" as defined by Section 415 of the Vehicle Code.

(c) The ~~actual incremental~~ cost *of the vehicle after deducting the amounts described in subdivision (a)* shall be stated in the contract for sale or lease with the purchaser, and shall be reported to the board quarterly.

(d) Notwithstanding any provision of the Bradley-Burns Uniform Local Sales and Use Tax Law (Part 1.5 (commencing with Section 7200)) or the Transactions and Use Tax Law (Part 1.6 (commencing with Section 7251)), the exclusion established by this section shall not apply with respect to any tax levied by a county, city, or district pursuant to, or in accordance with, either of those laws.

(e) This section shall be repealed on January 1, 2022.

SEC. 4. Section 10759.5 is added to the Revenue and Taxation Code, to read:

10759.5. (a) For purposes of determining the vehicle license fee imposed by this part, there are exempted from the determination of market value~~, the incremental cost~~ of a new motor vehicle propelled by alternative fuels, *any amount allowed as a credit under Section 30D of the Internal Revenue Code, relating to new qualified plug-in electric drive motor vehicles, and any amounts received, awarded, or allowed pursuant to a state incentive program for the purchase or lease of an alternative fuel vehicle, including, but not limited to, state income tax credits, the Clean Vehicle Rebate Project, the California Hybrid and Zero-Emission Truck and Bus Voucher Incentive Project, and the On-Road Heavy-Duty Voucher Incentive Program under the Carl Moyer Program*. This exemption shall apply to the subsequent payments of the vehicle license fee.

(b) For purposes of this section, ~~the following shall apply:~~

~~(1) "Incremental cost" means the amount equal to the reasonable difference between the cost of the motor vehicle defined in subdivision (a) and the cost of a comparable gasoline or diesel fuel vehicle. This amount shall constitute the maximum incremental cost for purposes of the exemption in subdivision (a), and shall be reduced, as appropriate, in accordance with the actual sales price of the vehicle. The actual incremental cost shall be stated in the contract for sale or lease with the purchaser.~~

~~(2) "Motor~~ "*motor* vehicle propelled by alternative fuels" means a motor vehicle that operates some or all of the time on a fuel other than gasoline or diesel.

(c) This section shall become operative on January 1, 2014, and shall remain in effect only until January 1, 2022, and as of that date is repealed.

SEC. 5. This act provides for a tax levy within the meaning of Article IV of the Constitution and shall go into immediate effect.

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# ATTACHMENT 3M

## SB 454 (Corbett)
## Air resources: electric vehicle charging stations.

### Summary
This bill prohibits the provider of an electric vehicle charging station from requiring a user to pay a subscription fee or obtain membership in order to use the station and requires the provider to accept payment via credit card or phone.

### Background
According to the Alternative and Renewable Fuel and Vehicle Technology Program website, in 2010 there were 1,300 charging stations at 401 different sites in California. On March 23, 2012, both the Governor and the California Public Utilities Commission (CPUC) announced a $120 million dollar settlement with NRG Energy Inc. that will fund the construction of a statewide network of charging stations for zero emission vehicles (ZEVs) that includes at least 200 public fast-charging stations and another 10,000 plug-in units at 1,000 locations across the state. In addition, the governor issued Executive Order B-16-2012 to establish benchmarks for facilitating the rapid commercialization of ZEVs, including the state's intention to add, by 2025, 1.5 million ZEVs to California roadways.

In February 2013, the governor's office released the ZEV Action Plan, which identifies strategies and actions to meet the benchmarks of the executive order. The strategies include, but are not limited to: requiring state-funded public Plug-in Electric Vehicle (PEV) charging stations; boosting industry efforts to develop EV charging station interoperability standards so drivers can use the station regardless of membership in a charging network; and encouraging public charging station owners to report their location and services to the National Renewable Energy Laboratory Alternative Fuels Data Center electronic database for the development of web based maps and smart phone apps.

### Status
Passed Senate Transportation and Housing Committee on April 9th and referred to Senate Committee on Energy, Utilities and Communications.

### Specific Provisions
This bill:
- Prohibits the provider of an electric vehicle charging station which requires payment of a fee from requiring a user to pay a subscription fee or obtain membership in order to use the station.
- Requires the provider to accept payment via credit card or via telephone number or both.
- Requires the provider to disclose to the public and the Energy Commission the station's geographic location, accepted methods of payment, and the amount of fees charged for network roaming. The Energy Commission may provide this information to the

National Renewable Energy Laboratory or other governmental entities for the purposes of compiling it and providing the information to the public.

- Allows the provider to impose network roaming charges for non-members if those charges are disclosed as described in the previous bullet.
- Requires the provider to label charging stations in accordance with federal regulations and, where commercially reasonable and feasible, clearly mark the way to the station with appropriate directional signage.
- Authorizes the Energy Commission after January 1, 2015, to adopt interoperability billing standards for network roaming payment methods for electric vehicle charging stations. If the commission adopts such standards, all electric vehicle charging stations which require payment must meet those standards within one year.
- Requires the Department of Consumer Affairs to maintain a toll-free telephone number and e-mail to collect customer complaints about electric vehicle charging stations and make a summary of the complaints available to the public. The department may also respond to the complaints.

**Impacts on SCAQMD's mission, operations or initiatives:** The purpose of the bill is to provide an easy and convenient way for drivers of electric vehicles to access and pay for services at public electric charging stations. The author believes this bill will provide the framework for electric vehicle charging stations to operate similarly to gas stations, allowing drivers to use their credit cards or phone to pay for charging. By facilitating the integration of electric vehicles on our roads and highways, the bill aids SCAQMD and state goals of reducing greenhouse gas emissions and protecting our air quality.

However, opponents note that this bill creates an unfunded mandate that will unintentionally dissuade people from deploying charging infrastructure. They argue that government intervention and control of foundational industry functions, like mapping and open access, will add considerable cost. Further, mandates that limit certain business models may be detrimental to the financial stability of privately funded businesses. Lastly, if the Energy Commission exercises the bill's authority to adopt interoperability billing standards, pioneering charging station companies will effectively be penalized with the costs of retroactive compliance. In lieu of this bill, opponents believe that industry should develop its own interoperability standards and station mapping and that public funding should be used to support open access.

**Recommended Position:** WATCH

**SUPPORT:**
Plug In America (sponsor)
Greenlots
UCLA Luskin Center for Innovation

**OPPOSED:**
ChargePoint
ECOtality

# ATTACHMENT 3N

AMENDED IN SENATE APRIL 2, 2013

**SENATE BILL** **No. 454**

**Introduced by Senator Corbett**

February 21, 2013

An act to add Chapter 8.7 (commencing with Section 44268) ~~of~~ *to* Part 5 of Division 26 of the Health and Safety Code, relating to air resources.

LEGISLATIVE COUNSEL'S DIGEST

SB 454, as amended, Corbett. ~~Air~~ *Public* resources: electric vehicle charging stations.

Existing law establishes the Alternative and Renewable Fuel and Vehicle Technology Program, administered by the State Energy Resources Conservation and Development Commission ~~(Energy Commission)~~, that authorizes, among other things, upon appropriation by the Legislature, a grant program to provide funding for homeowners who purchase a plug-in electric vehicle to offset costs associated with modifying electrical sources that includes a residential plug-in electric vehicle charging station.

Existing law also creates a grant program for the purchase and lease of zero-emission vehicles, as defined, in the state, to be developed and administered by the State Air Resources Board, in conjunction with the ~~Energy Commission~~ *commission*. The program provides grants to specified recipients in an amount equal to 90% of the incremental cost above $1,000 of an eligible new zero-emission light-duty car or truck, as defined.

This bill would create the Electric Vehicle Charging Stations Open Access Act that would ~~require, among other things, that an electric vehicle charging station that is installed in a public parking space be~~

~~made available for use by the general public. The bill would provide that~~ *prohibit the charging of a subscription fee on* persons desiring to use ~~the~~ *an* electric vehicle charging station ~~shall not be required to pay a subscription fee in order to use the station, and shall not be required~~, *as defined, and would prohibit a requirement for persons* to obtain membership in any club, association, or organization as a condition of using the station, *except as specified*. The bill *also* would ~~also~~ authorize an electric vehicle charging station to require additional out-of-network charges *for roaming users* if those charges are disclosed to the public, *as specified*. The bill would require an electric vehicle charging station to provide ~~one or more~~ *to the general public at least one of 2* specified options of payment ~~to the general public and would strongly encourage owners of electric vehicle charging stations in public parking spaces to clearly mark their charging stations with Department of Transportation approved signage at the station and at the entrance to the parking area or facility where the station is located~~.

The bill would require all ~~electric vehicle charging stations in public parking spaces~~ *persons* that provide ~~electricity for a fee or monthly subscription~~ *electric vehicle charging services* to disclose to the public and the ~~State Energy Resources Conservation and Development Commission~~ *commission* the station's geographic location, ~~including specific location in the parking lot or garage if applicable,~~ accepted methods of payment, the amount of the fees ~~or monthly subscription~~ charged~~, any additional charges~~ *nonsubscribers or* to nonmembers ~~or~~, *including* out-of-network charges~~, and how a consumer can find out if the charging station is available~~ *for roaming users*. The bill would authorize the commission to provide this information to the National Renewable Energy Laboratory or other governmental entities for the purposes of compiling it and providing the information to the public.

The bill would also require the commission, on or after January 1, 2015, to adopt interoperability standards for network roaming payment methods for electric vehicle charging stations, and would require, if the commission adopts standards, all electric vehicle charging stations *that require payment* to meet those standards within one year. The bill would require the Department of Consumer Affairs to maintain a toll-free telephone number and ~~e-mail~~ *email* address to collect complaints about electric vehicle charging stations from electric vehicle owners or drivers. The bill would authorize the department to respond to consumer complaints and would require the department to summarize those

complaints by number and type of complaint and make the summary available to the public.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: no.

*The people of the State of California do enact as follows:*

SECTION 1. The Legislature finds and declares all of the following:

(a) California is the nation's largest market for cars and light-duty trucks.

(b) The transportation sector is the biggest contributor to California's greenhouse gas emissions and accounts for approximately 40 percent of these emissions.

(c) California should encourage the development and success of zero-emission vehicles to protect the environment, stimulate economic growth, and improve the quality of life in the state.

*(d) California should encourage and support the development of infrastructure for open and accessible public charging stations as well as industry efforts to develop interoperability standards for those charging stations.*

~~(d)~~

*(e)* In order to reach the goal of 1.5 million electric drive vehicles in California by 2025, electric vehicle (EV) consumers need confidence that they can access a robust network of EV charging stations. Any EV driver should be able to access any publicly available charging station, regardless of the system provider.

~~(e)~~

*(f)* EV consumers and drivers need to be able to find the stations and know how much they cost ~~so that electricity can become a reliable commodity as a transportation fuel. Consumers will gain confidence from fuel pricing transparency and learn the key advantage of a fuel which costs the equivalent of less than $1 per gallon of gasoline~~.

~~(f)~~

*(g)* It is the intent of the Legislature to *(1)* promote a positive driving experience ~~to assist~~ *by assisting* in the widespread deployment of electric vehicles, *(2) not limit the ability of a property owner or lessor of public parking spaces, as defined in*

*Section 44268, to restrict use or access of those parking spaces, and (3) provide procedures that allow EV drivers to access EV charging station services for a cost or fee through a network-roaming arrangement from various EV service providers*.

SEC. 2. Chapter 8.7 (commencing with Section 44268) is added to Part 5 of Division 26 of the Health and Safety Code, to read:

## CHAPTER 8.7. ELECTRIC VEHICLE CHARGING STATIONS OPEN ACCESS ACT

44268. As used in this chapter, the following ~~definitions shall apply~~ *terms have the following meanings*:

(a) "Battery" means an electrochemical energy storage system powered directly by electrical current.

(b) "Battery charging station" means an electric component assembly or cluster of component assemblies designed specifically to charge batteries within electric vehicles *by permitting the transfer of electric energy to a battery or other storage device in an electric vehicle*.

(c) "Electric vehicle" means a vehicle that uses an electric motor for all or part of the motive power of the vehicle, including battery electric, plug-in hybrid electric, or plug-in fuel cell vehicle.

(d) "Electric vehicle charging station" means ~~any~~ *one or more* public parking ~~space~~ *spaces* located together with a battery charging station ~~that supplies electricity for the purpose of recharging electric vehicles by permitting the transfer of electric energy to a battery or other storage device in an electric vehicle~~. An electric vehicle charging station may include several charge points simultaneously connecting several electric vehicles to the station and any related equipment needed to facilitate charging ~~plug-in~~ electric vehicles.

(e) "Interoperability standards" means the ability for a member of one electric charging station network to use another network.

(f) "Network roaming" means the act of a member of one electric charging station network using a charging station that is outside of the member's network with his or her network account information.

(g) "Public parking space" means a parking space that is available to, *and accessible by,* the ~~general~~ public and ~~does~~ *includes on-street parking spaces, parking spaces in surface lots or*

*underground or above-ground parking garages, and designated visitor parking spaces in a private business parking lot. "Public parking spaces" shall* not include a parking space that is part of, or ~~connected to, a residence or for exclusive use of employees. Public parking spaces include, but are not limited to, onstreet parking, parking spaces at places of employment, office buildings, schools, hotels, airports, shopping centers, or restaurants.~~ *connected to, a private residence or a parking space that is reserved for the exclusive use of an individual driver or vehicle or for a group of drivers or vehicles, such as employees, tenants, customers, or residents of an adjacent building.* Nothing in this article limits the ability of the owner or lessor of the parking space from restricting use of the parking space.

44268.2. (a) ~~An electric vehicle charging station that is installed in a public parking space shall be made available for use by the general public.~~ *(1)* Persons desiring to use ~~the~~ *an* electric vehicle charging station *that requires payment of a fee* shall not be required to pay a subscription fee in order to use the station, and shall not be required to obtain membership in any club, association, or organization as a condition of using the station. ~~An~~ *Use of an* electric vehicle charging station may require additional out-of-network charges *for nonmembers* if those charges are disclosed to the public, *pursuant to subdivision (b)*. An electric vehicle charging station shall provide *to the public* one or ~~more~~ *both* of the following options of payment ~~to the general public~~:

~~(1)~~

*(A)* Pay directly via credit card.

~~(2)~~

*(B)* Pay over the ~~phone~~ *telephone* through a toll-free telephone number established and displayed on *or near* the charging station.

~~(3)~~

*(2)* ~~Pay through a network roaming arrangement.~~ *Notwithstanding paragraph (1), an electric vehicle charging station may offer services on a subscription- or membership-only basis provided those electric vehicle charging stations allow nonsubscribers or nonmembers the ability to use the electric vehicle charging station through the payment options detailed in paragraph (1).*

(b) All ~~electric vehicle charging stations in public parking spaces that provide electricity for a fee or monthly subscription~~ *persons*

*providing electric vehicle charging services* shall disclose to the public and the State Energy Resources Conservation and Development Commission the station's geographic location~~,~~ ~~including specific location in the parking lot or garage if applicable~~, accepted methods of payment, the amount of the fees ~~or monthly subscription~~ charged *to nonsubscribers or nonmembers for single-use charging services or stations, including* any additional charges to nonmembers or out-of-network charges~~, and how a consumer can find out if the charging station is available~~ *for roaming users*. The commission may provide this information to the National Renewable Energy Laboratory or other governmental entities for the purposes of compiling it and providing the information to the public.

~~(c) Owners of electric vehicle charging stations in public parking spaces are strongly encouraged to clearly mark their charging stations with Department of Transportation approved signage at the station, and at the entrance to the parking area or facility where they are located.~~

*(c) Electric vehicle charging stations subject to the requirements of this section shall be labeled in accordance with Part 309 of Title 16 of the Code of Federal Regulations, and where commercially reasonable and feasible, be clearly marked with appropriate directional signage in the parking area or facility where they are located.*

(d) On or after January 1, 2015, the commission may adopt interoperability standards for network roaming payment methods for electric vehicle charging stations. If the commission adopts *interoperability billing* standards, all electric vehicle charging stations *that require payment* shall meet those standards within one year. The commission may adopt *interoperability* standards promulgated by an outside authoritative body.

(e) The Department of Consumer Affairs shall maintain a toll-free telephone number and ~~e-mail~~ *email* address to collect consumer complaints about electric vehicle charging stations from electric vehicle owners or drivers. The department may respond to complaints. The department shall summarize the complaints by number and type of complaint and make the summary available to the public.

O

South Coast Air Quality Management District
Legislative Analysis Summary – SB 621 (Gaines)
Version: As amended, April 2, 2013
Analyst: *GSA*

# ATTACHMENT 3O

## SB 621 (Gaines)
## Vehicular air pollution: in-use, diesel-fueled vehicles.

**Summary:** This bill would delay, for five years, all compliance deadlines for particulate exhaust filter retrofits on diesel-fueled motor vehicles regulated under the Air Resources Board (ARB) mandated retrofitting program.

**Background**: According to the author, ARB regulations regarding emissions restrictions of diesel particulate matter, oxides of nitrogen, and other criteria pollutants from in-use, diesel-fueled vehicles have forced businesses to assume extraordinary compliance costs which threaten the existence of many small businesses.

**Status**: April 2, 2013 - From Sen. Transportation and Housing Comm. with author's amendments. Read second time and amended. Re-referred to Sen. Com. on T. & H.

**Specific Provisions:** Specifically, this bill would add Section 43018.3 to the Health and Safety Code, to read:

> The state board shall amend Section 2025 of Article 4.5 of Chapter 1 of Division 3 of Title 13 of the California Code of Regulations which outlines regulations requiring emissions compliance retrofits on various diesel vehicles. This amendment will extend by five years all compliance dates covered by that regulation, including dates in generally applied schedules and in phase-in options, exemptions, and delays, for requirements applicable to all vehicles.

**Impacts on SCAQMD's Mission, Operations or Initiatives**: This bill would significantly delay implementation of one of ARB's primary regulations to cut diesel particulate and oxides of nitrogen emissions from heavy-duty vehicles in California. Specifically, it would extend by five years all compliance dates in the on-road heavy-duty diesel regulation, which affects trucks, buses, and schoolbuses. This regulation is a centerpiece of California's efforts to reduce exposure to toxic diesel particulate, and has been strongly supported by the District. The bill would significantly increase diesel exposures, be unfair to fleets and vehicle owners that have invested in early compliance, and be unfair to manufacturers of clean technology that have made business decisions based on the dates in the regulation.

**Recommended Position:** OPPOSE

# ATTACHMENT 3P

AMENDED IN SENATE APRIL 2, 2013

**SENATE BILL** **No. 621**

**Introduced by Senator Gaines**

February 22, 2013

An act to add Section 43018.3 to the Health and Safety Code, relating to vehicular air pollution.

LEGISLATIVE COUNSEL'S DIGEST

SB 621, as amended, Gaines. Vehicular air pollution: ~~exemption: low-use vehicles: nonprofit organizations.~~ *in-use, diesel-fueled vehicles.*

Existing law imposes various limitations on emissions of air contaminants for the control of air pollution from vehicular and nonvehicular sources. Existing law generally designates the State Air Resources Board as the state agency with the primary responsibility for the control of vehicular air pollution. Existing law requires the state board to adopt and implement motor vehicle emission standards, in-use performance standards, and motor vehicle fuel specifications for the control of air contaminants, including standards for off-road and nonvehicle engine categories.

This bill would require the state board to amend a specified regulation relating to the emissions restrictions of diesel particulate matter, oxides of nitrogen, and other criteria pollutants from in-use, diesel-fueled vehicles to extend by 5 years various compliance dates applicable to those vehicles.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: no.

*The people of the State of California do enact as follows:*

SECTION 1. Section 43018.3 is added to the Health and Safety Code, to read:

43018.3. The state board shall amend Section 2025 of Article 4.5 of Chapter 1 of Division 3 of Title 13 of the California Code of Regulations to extend by five years all compliance dates, including dates in generally applied schedules and in phase-in options, exemptions, and delays, for requirements applicable to all *motor* vehicles covered by that regulation.

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# ATTACHMENT 4

**SOUTH COAST AIR QUALITY MANAGEMENT DISTRICT**
**LEGISLATIVE REPORT**

**FROM HOME RULE ADVISORY GROUP**
**MEETING OF MARCH 20, 2013**

HRAG members present:
Dr. Joseph Lyou, Chairman
Dr. Elaine Chang, SCAQMD
Barbara Baird, SCAQMD
William Wong, SCAQMD
Elizabeth Adams, EPA (participated by phone)
Greg Adams, L.A. County Sanitation Districts
Curtis Coleman, Southern California Air Quality Alliance
Chris Gallenstein, CARB (participated by phone)
Bill LaMarr, California Small Business Alliance
Joy Langford, Mandeville Group
Art Montez, AMA International
Jonathan Nadler, SCAG (participated by phone)
Bill Quinn, CCEEB
Larry Rubio, Riverside Transit Agency (participated by phone)
Lee Wallace, SoCalGas and SDG&E
Mike Wang, WSPA

## LEGISLATIVE UPDATE

William Sanchez provided an update on what was discussed at the Legislative Committee meeting on March 8, 2013.

### *Federal*

The consultants reported as follows: Sequestration and potential budget cuts remain the primary focus. Of the $5 million DERA grant funding available to the Houston and South Coast areas, a 5% cut ($250,000) has been proposed so far.

### *Discussion*

Mr. Adams asked if DERA is part of the SCAQMD's 317 funds. Dr. Chang responded yes, but only with respect to concurrent NOx reductions.

### *State*

Senator Rubio's resignation marked the end of the major impetus for CEQA reform. There are 27 CEQA related bills that have been introduced, but most are not expected to move. One notable exception is SB 731, which is a spot line bill introduced by Senator Steinberg. . Senator Jerry Hill will succeed Senator Rubio as Chair of the Senate Committee on Environmental Quality. Although Senator Hill may continue to address the issue of CEQA reform, the conventional wisdom is that his approach may not be as aggressive.

The following bills were taken to the Committee for consideration:

***SB 389 (Wright) South Coast Air Quality Management District: Electric Generating Facilities: Emissions Offsets***

SB 389 prohibits SCAQMD from charging a fee for offsets from its internal emissions offsets account to offset any emissions increase from the replacement of electric utility steam boilers. SB 389 would preempt proposed Rule 1304.1 which would require electrical generating facilities to pay for those offsets provided by the SCAQMD, and those funds would be used for further air pollution improvement strategy. The Committee approved staff's recommendation to oppose the bill.

***SB 736 (Wright) Electrical Generation Facility: Upgrades: Permit Fees***

SB 736 would prohibit SCAQMD from charging fees for permit modifications in cases that would result in greater thermal efficiency of the boilers. This bill would be in violation of the Clean Air Act requirements. The Committee approved staff's recommendation to oppose the bill.

***SB 760 (Wright) Electrical Generation Facility: Emission Reduction Credits***

SB 760 would prohibit SCAQMD from imposing any conditions to shut down or destroy existing equipment at a facility when the facility applies for emission reductions credits under SCAQMD Rules 1304 and 1309. Under federal law, SCAQMD is required to make sure that the shutdowns are permanent and verifiable. The Committee approved staff's recommendation to oppose the bill.

***AB 818 (Blumenfield) Air Pollution Control: Penalties***

AB 818 allows the city attorneys and the district attorneys under specified conditions to choose to prosecute air quality violations without coordination with or consent of the air district. Moreover, any funds collected would go to the city or county general fund as opposed to being used for further air quality mitigation efforts. The Committee approved staff's recommendation to oppose the bill.

***SB 691 (Hancock) Nonvehicular Air Pollution Control: Penalties***

SB 691 was prompted by Chevron refinery's explosion and fire. The existing regulation only allowed for a $10,000 per day fine. The bill would enhance the penalties for the first day, and the first day only, to $100,000. The Legislative Committee was concerned that even a $100,000 fine may not have a deterrent effect with some of the large corporations involved. The Legislative Committee is recommending that the District adopt a position of support with amendments urging the author to consider more serious fines under the appropriate circumstances.

***SB 286 (Yee) Vehicles: High-Occupancy Vehicle Lanes***

The bill will extend for three years the California's Clean Air Vehicle Sticker Program, which allows zero and low-emission vehicles (green and white decals) to access the High Occupancy Vehicle (HOV) lanes. The Committee approved staff's recommendation to support the bill.

***Discussion***

Dr. Lyou added that AB 266 (Blumenfield) will extend the white sticker to 2025 (http://www.leginfo.ca.gov/pub/13-14/bill/asm/ab_0251-0300/ab_266_bill_20130207_introduced.html).

Mr. Quinn asked if SB 691 (Hancock) would increase the cap for non-Title V facilities as well as Title V facilities. Mr. Sanchez answered yes. Dr. Lyou asked if the criteria for determining the penalty would be the same. Ms. Baird responded as follows: The criteria, outlined in Health and Safety Code Section 42403, will not be changed. For strict liability public nuisance violations, the

maximum penalty is currently $1,000 per day. The bill would increase this amount to $10,000 a day, or for a Title V facility up to $100,000 per day, but only for the first day and only affecting the civil penalty aspect. The other penalties remain the same. Mr. Quinn asked for more details about the Legislative Committee's concerns. Ms. Baird responded that several Board members thought that even $100,000 would not be an adequate deterrent in some cases. She added that, under current law, other factors, such as negligence and injury can increase the penalty; the Board has directed staff to ask the author to increase the penalties under appropriate circumstances. Mr. Quinn was concerned with the broad definition of what specifies a nuisance under HSCS 41700 and the potential for misuse. Ms. Baird responded that HSCS 42403 still governs all penalty settlements, and the criteria outlined under that section needs to be adhered to.